



Town of Shirley

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PROTECTIVE ZONING BYLAW Revised

2004, As Amended

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1. GENERAL PROVISIONS

1.1 Authority and Title

This Bylaw is adopted in accordance with and pursuant to the provisions of Massachusetts General Laws, Chapter 40A, as amended. This Bylaw shall be known and may be cited as the Zoning Bylaw of the Town of Shirley, Massachusetts.

1.2 Purposes

The purposes of this Bylaw include, but are not limited to, the following: to lessen congestion in the streets; to conserve health; to secure safety from fire, flood, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to encourage housing for persons of all income levels; to facilitate the adequate provisions of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements; to conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment; to encourage the most appropriate use of land throughout the Town, including consideration of the recommendations of the Master Plan adopted by the Planning Board, the Shirley Open Space and Recreation Plan and the Comprehensive Plan of the Montachusett Regional Planning Commission; and to preserve and increase amenities by the promulgation of regulations to fulfill these purposes under the provisions of Massachusetts General Laws, Chapter 40A.

In accordance with these purposes, the use, erection, establishment, movement, repair, alteration, enlargement, height, appearance, location and occupancy of buildings and structures, and the uses and occupancy of premises in the Town of Shirley are hereby regulated and restricted as hereinafter provided.

1.3 Planning Board Associate Member

Per Massachusetts General Laws, Chapter 40A, Section 9, the Shirley Planning Board, as it is a special permit granting board, shall have one associate member who shall sit, when necessary, on the Board for the purpose of acting on Special Permit applications. This position will be filled by the general election at the Annual Town Meeting and term shall be for two (2) years.

2. USE DISTRICTS AND REGULATIONS

2.1 Establishment of Districts

The Town of Shirley is hereby divided into the following classes of districts to be known as:

R-R	Residential Rural	C-1	Commercial Village
R-1	Residential	C-2	Commercial Highway
R-2	Residential	I	Industrial
R-3	Residential	MU	Mixed Use Overlay District

2.2 Overlay Districts

The following overlay districts are hereby established:

FP	Flood Plain
MU	Mixed Use
Z1	Water Supply & Wellhead Protection
Z2	Water Supply & Wellhead Protection

2.3 Zoning Map

The location and boundaries of the zoning districts are hereby established as shown on a map entitled, "Zoning Map of the Town of Shirley" ("the Map"), dated May 15, 1985, as amended, which accompanies and is hereby declared to be part of this Bylaw. All explanatory legend and memoranda thereon or attached thereto are hereby declared to be a part of this Bylaw. Any change in the location of boundaries of a zoning district hereafter made through the amendments of this Bylaw shall be indicated by the alteration of such Map, and the Map, thus altered, is declared to be a part of the Bylaw thus amended. The Zoning Map shall be drawn at a large scale with ink on stable material and shall be located in the office of the Planning Board. Photographic reductions of this large-scale Zoning Map may serve as copies of the Zoning Map.

Copies of the Zoning Map and attached memoranda are filed with the Town Clerk.

2.4 Boundaries of Districts

- 2.4.1 Where the boundary lines are shown upon the Map within the side lines of public and private ways, railroads or water courses, the center lines of such ways shall be the boundary lines.
- 2.4.2 Where the boundary lines are shown upon the Map, approximately on the location of property or lot lines, and the exact location of property, lot or boundary lines is not indicated by means of dimensions shown in figures, then the property or lot lines shall be the boundary lines.
- 2.4.3 Boundary lines located outside of such lines of public and private ways and shown approximately parallel thereto shall be regarded as parallel to such side lines and dimensions shown in figures placed upon the Map between such boundary lines and side lines of public and private ways are the distances in feet of such boundary lines from such side lines, such distances being measured at right angles to such side lines unless otherwise indicated.
- 2.4.4 In all cases which are not covered by other provisions of this Section, the location of boundary lines shall be determined by the distance in feet, if given, from other lines upon said Map, by the use of identifications as shown on the Map, or by the scale of the Map.

- 2.4.5 Where a district boundary line (other than a boundary line for an overlay district) divides any lot existing at the time such line is adopted, the regulations for the less restricted portions of such lot shall extend no more than thirty (30) ft. into the more restricted portion, provided the lot has frontage in the less restricted district.
- 2.4.6 Where boundary lines are contour lines they are of indicated elevation above the datum mean sea level of the U.S. Geological Survey.
- 2.4.7 Any change of the Zoning Map shall constitute an amendment of this Bylaw and the procedure for making such a change shall conform to the requirements for amending this Bylaw.

2.5 Basic Use Regulations

No new structures shall be erected, constructed, established, altered, repaired, enlarged or moved, and no land shall be put to new use or shall be occupied except in conformity with the requirements, character and conditions laid down for each of the several districts established by this Bylaw. Any use not specifically listed herein or otherwise permitted in a district shall, to the extent permitted by law, be prohibited, except as noted in the following paragraph.

In accordance with MGL, Ch. 40A, and notwithstanding any provisions to the contrary, this Bylaw shall not prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the Commonwealth, or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations, concerning the bulk and height of structures and determining yard sizes, lot area, set-backs, open space, parking and building coverage requirements, in accordance with the provisions of this Bylaw; and this Bylaw shall not prohibit, unreasonably regulate or require a special permit for the use of land for the primary purpose of agriculture, horticulture or floriculture and shall not prohibit or unreasonably regulate the expansion or reconstruction of existing structures thereon for the primary purpose of agriculture, horticulture or floriculture except that all such activities may be limited to parcels of more than five (5) acres which are not zoned for agriculture, horticulture or floriculture, nor shall provisions of this Bylaw exempt land or structures from floodplain or wetlands regulations established pursuant to general law.

2.6 Schedule of Use Regulations

The restrictions and controls intended to regulate development in each district are set forth in the schedule below which is supplemented by other sections of this Bylaw.

The following notations apply to the Schedule of Use Regulations:

- Y (Yes) - Use permitted
- S (Special Permit) - Use allowed under Special Permit by Planning Board (SP) or Board of Appeals (SA) or Board of Selectmen (SS)
- N (No) - Use prohibited

Uses permitted and uses allowed under a Special Permit shall be in conformity with all the density and dimensional regulations and any other pertinent requirements of this Bylaw.

Where the Board of Selectmen acts as a Special Permit granting authority, the procedures and criteria of Section 9.2.3 shall be applicable.

SCHEDULE OF USE REGULATIONS

USE	R-R	R-1	R-2	R-3	C-1	C-2	I	MU
Residential:								
Detached single-family dwelling	Y	Y	Y	Y	Y	SA	N	N
Detached single-family dwelling on a "Hammerhead" lot	SP	SP	SP	SP	N	N	N	N
Accessory dwelling unit in an existing detached single-family dwelling (subject to Section 4.5)	Y	Y	Y	SA	SA	SA	N	N
In-law Apartment (subject to Section 4.10)	Y	Y	Y	Y	N	N	N	N
Cluster Residential housing	SP	SP	SP	SP	N	N	N	N
Conversion of a single-family dwelling existing at the time of the original adoption of this Bylaw into a multi-family dwelling	SA	SA	SA	SA	N	N	N	N
Two-family detached dwelling provided its external appearance is not significantly different from a single-family dwelling	Y	Y	Y	Y	SA	N	N	N
Multi-family housing (maximum six (6) units per building	SP	SP	SP	SP	SP	N	N	N
Customary home occupations such as shop, dressmaking, millinery, handicraft, baking, cooking, woodworking, or professional office when situated in the place of residence of such person, or in an accessory building provided that not more than 25% of the combined floor area of the residence and the accessory building is devoted to such occupation on the premises and that there is no external evidence of such use except for an announcement sign (subject to Sections 4.6, 4.7, or 4.8)	Y	Y	Y	Y	Y	Y	N	N
Rooming house or boarding house for not over four (4) lodgers	SA	Y	Y	Y	Y	Y	N	N
Mobile home park	N	N	N	N	N	N	N	N
Accessory uses on the same lot, if entirely auxiliary to permitted uses; provided that no building or enclosure for the keeping of livestock shall be nearer than 25 feet to any lot line (subject to Section 3.2.12)	Y	Y	Y	Y	Y	Y	Y	N
Community Facilities:								
Church, rectory, parish house, convent or other religious use	Y	Y	Y	Y	Y	Y	N	SP
Non-profit educational use either public, private or religious	Y	Y	Y	Y	Y	Y	N	N
Conservation areas, reservations or wildlife preserve	Y	Y	Y	Y	Y	Y	Y	N
Cemetery	SA	SA	SA	SA	N	N	N	N
Nursery school, day care center, day camp or other educational use	SA	SA	SA	SA	Y	Y	SA	N
Sanitary landfill and other solid waste facilities	N	N	N	N	N	N	SP	N
Use of land for a public utility	SA	SA	SA	SA	Y	Y	Y	SP
Golf courses (not including miniature golf), ski grounds, camping areas, or swimming facilities, including the incidental sale of refreshments, if primarily for the convenience of the patrons, and of equipment customarily related to their use	SA	SA	SA	SA	N	N	N	N
Hospitals, medical institutions, public or semi-public institutions of an historic or philanthropic or charitable	SA	SA	SA	SA	SA	SA	SA	N

USE	R-R	R-1	R-2	R-3	C-1	C-2	I	MU
character								
Community Facilities cont.:								
Governmental Administration Buildings; Fire or Police Station and any other buildings or structures used in connection with municipal and governmental affairs	SP	SP	Y	Y	Y	Y	Y	SP
Agriculture:								
Raising or keeping farm animals, livestock, or poultry for use by residents of the premises, subject to Board of Health regulations and provided that no noise or odor is observable at the lot lines	Y	Y	Y	SA	N	Y	Y	N
Commercial raising or keeping of horses, goats, sheep, cattle, and not over 15 pigs, or poultry. No building or enclosure for the keeping of animals shall be nearer than 25 feet to any lot line.	Y	Y	Y	Y	N	Y	Y	N
The maintenance of dog kennels and riding stables	SA	SA	SA	N	N	N	N	N
Gardens; growing and storing of fruits, berries, vegetables, hay, fodder and ensilage; orchards, wood lots and forestry; and nursery and similar activities in the field of agriculture	Y	Y	Y	Y	Y	Y	Y	N
Commercial greenhouse	SA	SA	SA	SA	SA	Y	Y	N
Veterinary hospital	N	N	N	SA	SA	Y	Y	N
Forestry	Y	Y	Y	Y	Y	Y	Y	N
Stand for commercial retail sale of agriculture or farm produce raised primarily on the premises, or articles of home manufacture from such produce, and ancillary products to the business, set back at least 20 feet. From the street line and provided that space for customers' cars is available off the right-of-way of the street and is so arranged as not to permit backing of automobiles onto any public or traveled way	SA	SA	SA	SA	Y	Y	Y	N
Retail and Service:								
Stores for the sale of goods at retail	N	N	N	N	Y	Y	SA	SP
Restaurants, taverns or cafes serving food or beverages from within the premises	N	N	N	N	Y	Y	N	SP
Fast food, including drive-through	N	N	N	N	SA	SA	SA	N
Establishments selling new and/or used operable automobiles, trucks, accessories, farm equipment, aircraft, motorcycles, and camping trailers	N	N	N	N	Y	Y	SA	N
Hotels, motels	N	N	N	N	SA	SA	N	N
Tourist homes and bed and breakfasts	SA	SA	SA	SA	SA	SA	N	N
Trailer camp	N	N	N	N	N	N	N	N
Funeral home or mortuary establishment	N	N	N	N	Y	Y	SA	SP
Convalescent and nursing home	SA	SA	SA	SA	SA	SA	N	N
Medical and dental offices not attached to the doctor's or dentist's residence	N	N	N	N	Y	Y	SA	SP
Dry cleaning outlet	N	N	N	N	Y	Y	N	SP
Membership club or non-profit organization	SA	SA	SA	SA	Y	Y	SA	SP
Gasoline service stations and automobile repair shops (not including junkyards) providing that there shall be no storage of automobiles on the premises other than those in the	N	N	N	N	Y	Y	Y	N

USE	R-R	R-1	R-2	R-3	C-1	C-2	I	MU
process of awaiting repair or awaiting delivery or pickup after repair								
Retail and Service cont.:								
Automotive graveyard or other junkyard	N	N	N	N	N	N	N	N
Miscellaneous trade and repair service and shops as principal use	N	N	N	N	Y	Y	SA	SP
Indoor motion picture and amusement establishment	N	N	N	N	Y	Y	N	SP
Helicopter landing area and commercial communication towers for radio and television	N	N	N	N	N	Y	Y	N
Shops for custom work or the making of articles to be sold at retail on the premises as a principal use	N	N	N	N	Y	Y	Y	SP
Commercial parking lot	N	N	N	N	Y	Y	Y	SP
Commercial sports and recreation	N	N	N	N	Y	Y	N	N
Miscellaneous business offices including insurance and real estate as principal use	N	N	N	N	Y	Y	Y	SP
Personal service establishments, including beauty salon, barbershop, tailor, and similar uses	N	N	N	N	Y	Y	N	SP
Banking institutions	N	N	N	N	Y	Y	N	SP
Neighborhood retail	N	N	N	N	N	N	N	N
Temporary (less than 30 days) amusement enterprises not including permanent structures	N	N	N	N	SA	SA	SA	N
Industrial and wholesale:								
Research, experimental and testing lab	N	N	N	N	N	SA	Y	N
Light manufacturing and manufacturing which is incidental to research, experimental and testing laboratories, whether enclosed or otherwise	N	N	N	N	N	SA	Y	N
Enclosed manufacturing	N	N	N	N	N	N	Y	N
Assembly, fabrication, processing, printing, wholesaling and distribution, warehousing and interior storage	N	N	N	N	N	N	Y	N
Exterior storage, as an accessory use, exclusive of junk cars or other junk items, provided that the use is screened from view, by a fence or appropriate landscaping, from abutting streets or properties	N	N	N	N	N	N	Y	N
Beverage bottling or food packaging plant but not including meat and fish processing	N	N	N	N	N	N	Y	N
Plant for dry cleaning, cold storage or freezing	N	N	N	N	SA	SA	Y	N
Above ground storage of gas and petroleum products	N	N	N	N	N	SA	Y	N

2.7 Prohibited Uses

Any use not specifically or generically listed herein or otherwise permitted in a district shall be deemed as prohibited. Any legal use of land or building is permitted in accordance with the requirements of this Bylaw except those uses which are dangerous or detrimental to a neighborhood because of fire or explosive hazard, offensive noise, smoke, vibration, harmful radioactivity, electrical interference, dust, odor, fumes, heat, glare, unsightliness or other objectionable characteristics.

2.8 Non Conforming Uses

2.8.1 Any use or structure lawfully existing at the time of the adoption of the Shirley Zoning Bylaw or any amendment thereto and any use or structure lawfully begun, or as to which a building or special permit

has been issued, before the first publication of notice of the public hearing on this amendment to such Bylaw or any future amendment thereto may be continued or completed although such structure or use does not conform to the provisions hereof or of such amendment, provided that:

- a. Construction or operations pursuant to such building or special permit shall conform to the provisions of this Bylaw as amended unless the use or construction is commenced within a period of six (6) months after issuance of the permit and, in cases involving construction, unless such construction is completed as continuously and expeditiously as is reasonable;
 - b. Any conversion of any non conforming use to a conforming use shall be subject to the requirements for such uses in the district in which the use is located and once changed shall not thereafter revert to the non conforming use;
 - c. Wherever a non conforming use has been abandoned for a period of more than two (2) years except for agricultural, horticultural or floricultural where the period shall be for more than five (5) years, it shall not be reestablished and any future use shall conform to the Zoning Bylaw and any amendment thereto;
 - d. No building or structure put to a non conforming use or non conforming structure which is destroyed or damaged by fire or other causes, or demolished to the extent, in any of such cases, of more than three-quarters (3/4) of its fair market value at the time of said damage or demolition as determined by the Building Inspector may be rebuilt for the purpose of reestablishing the non conforming use, unless the Board of Appeals shall make the finding set forth in Section 9.2.3 below with respect to such reconstruction or repair;
 - e. Any reconstruction or repair of a partially destroyed, demolished or damaged structure which is non conforming, or which was put to a non conforming use must be commenced within one year of such damage or destruction and the reconstruction completed and the structure occupied within two (2) years of such damage or destruction.
- 2.8.2 A residence in a district where residences are permitted, but on a non conforming lot, may be reconstructed, altered or repaired without change in the lot size, subject to the provisions of Section 2.8.3.
- 2.8.3 A single or two-family residential structure may be the subject of alteration, reconstruction, extension or structural change provided that such alteration, reconstruction, extension or structural change does not increase the non conforming nature of such structure.
- 2.8.4 Any other non conforming structure or use the change or alteration of which is not otherwise permitted as a matter of right by the provisions hereof, may be extended, altered, reconstructed or repaired, provided any such extension shall not exceed twenty-five percent (25%) of its area on said lot as of June 16, 1988, and that in each case the Board of Appeals, in accordance with the procedures of Section 9.2.3 hereof, shall find that such extension, alteration, reconstruction or repair is not substantially more detrimental to the neighborhood than the existing non conforming structure or use.

Notwithstanding anything contained herein to the contrary, such expansion of a structure or use permitted hereunder must be physically located within the perimeter of the lot as said perimeter existed and upon which the non conforming structure or use was situated on the date the structure or use originally became non conforming.

2.9 Rate of Development

- 2.9.1 The purpose of this Section, "Rate of Development", is to ensure that growth occurs in an orderly and planned manner; to phase growth so that it will not unduly strain the community's ability to provide adequate public safety, schools, roads and municipal infrastructure, and human services; to maintain the community at a quality of life which citizens expect; to provide the Town boards and its agencies

information, time, and capacity to incorporate such growth into or as per the Master Plan for the community; and to preserve and enhance existing community character and the value property.

2.9.2 General

Beginning on September 11, 2000, building permits, including foundation permits, for not more than thirty (3) dwelling units shall be applied for or issued in each of the five (5) calendar years following said date, for the construction of new residential dwelling units, per approved ANR and/or standard or cluster subdivision. Further, no one person or entity nor their successors in interest, nor any entity in which they hold a legal or beneficial ownership shall be issued more than five (5) of the total number of permits available in any one year, with the exception of the exemptions as described in this Bylaw.

“Dwelling unit” shall mean any portion of a building occupied or suitable for occupancy as a residence and arranged for the use of one or more individuals living as a single housekeeping unit with its own cooking, living, sanitary and sleeping facilities. Within the provisions of this Section, an “Accessory Apartment”, as defined in Section 11.1 of the Zoning Bylaws, shall not constitute a dwelling unit.

2.9.3 Procedures

Any building permits issued shall act on each permit with the following procedures:

- a. The Building Inspector shall act on each permit in order of submittal. Any permit application that is incomplete or inaccurate shall be returned to the applicant within three (3) business days and shall require new submittal.
- b. The Building Inspector shall accept applications and issue permits one (1) year at a time.
- c. The Building Inspector shall mark each application with the time and date of submittal.
- d. Any issued permit shall conform to the time limits set by Section 8.2.3.
- e. Any building permits not issued in any calendar year (January 1 – December 31) shall not be available for issuance in any subsequent year.
- f. At the end of each calendar year in which this Bylaw is in effect, the Building Inspector shall retain all applications for which a building permit has not been issued. Upon being informed in writing by the applicant before the tenth (10th) day of January of the succeeding year the applicant desires the application to remain in effect, the Building Inspector shall treat said application in accordance with Section 2.9.2 above.

2.9.4 Exemptions

The provisions of this Section shall not apply to, nor limit in any way, the granting of building permits or occupancy permits required for enlargements, restoration, or reconstruction of existing dwellings existing on lots as of the date of passage of this Bylaw.

- a. Dwelling units for low and/or moderate income families or individuals, where all of the following conditions are met:
 1. Occupancy of the units is restricted to households qualifying under the Local Initiative Program as administered under the Massachusetts Department of Housing and Community Development.
 2. The affordable units are subject to a property executed and recorded deed restriction running with the land which shall limit each succeeding resale price to an increase of ten percent (10%), plus any increase in the consumer price index, plus cost of any improvements certified by the Building Inspector.
- b. Dwelling units for senior residents, where occupancy of the units is restricted to senior persons through a property executed and recorded deed restriction running with the land. For purposes of this Section, “Senior” shall mean persons over the age of fifty-five (55).

- c. Development projects which voluntarily agree to a minimum of twenty-five percent (25%) permanent reduction in buildable lots permitted under an approved definitive subdivision plan. Such developer shall be eligible for a maximumj of five (5) exempt building permits per year within the said subdivision.
- d. Person or entity is entitled to one (1) permit, on only one (1) lot, per year, on a lot the person or entity owns at the time of the acceptance of this Bylaw.
- e. Beginning on September 12, 2000 through December 31, 2000, no more than fifteen (15) building permits may be granted under the provisions of this Bylaw

2.9.5 Time Limitation and Extension

This Section shall expire on December 31, 2005, provided however, that this Section may be extended without lapse of its provisions and limitations, by vote of the Town Meeting prior to September 10, 2005.

2.9.6 Separability

The provisions of this Bylaw are herby declared separable and if any provision shall be held invalid or unconstitutional, it shall not be construed to affect the validity or constitutionality of any of the remaining provisions of this Bylaw.

3. DIMENSIONAL CONTROLS

3.1 Schedule of Dimensional Controls

No principal or accessory building or structure in any district shall be located, constructed, changed, enlarged or permitted and no use of premises or land in any district shall be permitted which does not conform to the density and dimensional regulations as set forth in the following Schedule of Dimensional Controls covering lot sizes, yard dimensions and building height.

SCHEDULE OF DIMENSIONAL CONTROLS

Dimensional Requirements	R-R (1)/(3)/(5)*	R-1 (1)/(3)/(5)*	R-2 (1)/(3)/(5)*	R-3 (1)/(3)/(5)*	C-1 (5)*	C-2	I	MU
Min. Lot Size Single Family	80,000sf	40,000sf	30,000sf	15,000sf	15,000sf	15,000sf	---	15,000sf
Min. Lot Size Two Family	100,000sf	60,000sf	45,000sf	19,000sf	19,000sf (4)*	-	---	19,000sf
Min. Lot Size (Other Uses)	80,000sf	40,000sf	30,000sf	15,000sf	10,000sf	20,000sf	60,000sf	10,000sf
Min. Frontage	225ft	175ft	150ft	100ft	60ft	100ft	100ft	60ft
Min. Width At Building	225ft	175ft	150ft	100ft	60ft	100ft	100ft	60ft
Minimum Front Yard Depth	50ft	50ft	35ft	30ft	5ft	30ft	30ft	5ft
Minimum Side Yard Width	50ft	23ft	20ft	20ft	(2)*	30ft	50ft (2)*	(2)*
Min. Opposite Side Yard Width	50ft	17ft	15ft	15ft	---	15ft	15ft	15ft
Minimum Rear Yard Depth	50ft	50ft	40ft	30ft	15ft	50ft	50ft	---
Max. Lot Coverage by Building	25%	25%	25%	25%	75%	25%	25%	75%
Maximum Height	35ft	35ft	35ft	35ft	45ft	45ft	45ft	45ft
Max. Number of Stories	2 ½	2 ½	2 ½	2 ½	3	3	3	3

- (1)* These dimensional controls may be waived in accordance with the provisions of Section 4.2, Cluster Residential Housing, upon the issuance of a special permit.
- (2)* Minimum yard adjacent to residential district is 50 ft.
- (3)* Hammerhead Lots see Section 4.3.
- (4)* Special Permit, Board of Appeals.
- (5)* See special regulations for Multi-Family Housing under Section 4.1.

3.2 Special Dimensional Provisions

3.2.1 Height Measurement

Height shall be measured as the vertical distance from the average ground elevation around the exterior walls of the structure to the highest point of the top story in the case of a flat roof, and to the mean height between the plate and the ridge in the case of a pitched roof provided that the ridge of a pitched roof shall not be higher than 130% of the stipulated height for the district.

3.2.2 Height Limitations

In determining the height of a building, any floor level shall be counted as a story if it is to be used in part for sleeping rooms, or if it is higher than three (3) ft. below the average ground level around the exterior walls of the structure. Limitations of height shall not apply to chimneys, ventilators, skylights, spires, tanks, antennas, solar panels, and other features of such building usually carried above roofs, provided that in a residential district such features are in no way used for living purposes.

3.2.3 Lot Area Computation

In computing the area of any lot in any district, no part of a street or public way and no part of any water body bordering the lot or river shall be included.

3.2.4 Frontage - Access

A building lot in any district shall have frontage on and rights of access to one or more of the following for the distance required under Dimensional Controls:

- a. A way legally accepted by Town Meeting vote, or
- b. A way established by county, state, or federal authority, or
- c. A way established by a subdivision plan approved in accordance with the Subdivision Control Law, or
- d. Any other way or portion of a way in existence when the Subdivision Control Law became effective which, because of unusual conditions such as limitations upon the extent or type of land use to be served, the Planning Board, following consultation with the Highway Surveyor, Police Chief, Fire Chief and Board of Selectman, has determined to be sufficient for the needs for access and utilities to serve potential needs of land abutting on or served thereby.

The Planning Board shall also make such determinations with respect to the ways described in a, b, c, herein above.

Any determination made by the Building Inspector or Planning Board under this Section may be appealed to the Board of Appeals by any party having standing as provided in Section 8 of Chapter 40A, MGL.

The Town Clerk shall maintain a list of ways and portions thereto which have been determined to qualify to provide frontage under the provisions of this Section. The Planning Board may specify that its determination of adequacy applies only to given premises and not generally to all properties served by that way in cases where the limitations or other conditions justifying access adequacy for those premises are not generally true for other properties served by that way.

3.2.5 Frontage - Measurement

Frontage shall be measured along a straight line connecting points of intersection of the side lot lines with the street line on which the lot is located, and with not less than the required distance between said lot lines

at all points from the street line to the dwelling or main non-residential structure, except as hereafter provided in Section 4.3.1 for hammerhead lots.

3.2.6 Frontage - Dead End Streets

A lot on a turning circle of a dead end street may have a frontage of not less than eighty (80) ft. provided that the shortest distance between side lot lines shall be at least 120 ft. at every point more than thirty-five (35) ft. from the street line to the dwelling or main non-residential structure.

3.2.7 Frontage/Setback - Two Streets/Corner Lot

A lot having frontage on two (2) streets which do not intersect shall have two (2) front yards, each of which shall comply with the minimum front yard setback requirements of this Bylaw, but need to meet the minimum frontage requirement only with respect to one of the streets. A corner lot having frontage at the intersection of two (2) streets must have the minimum frontage on at least one of the streets and shall be deemed to have two (2) front yards, each of which shall comply with the minimum front yard setback requirements of this Bylaw; one of the remaining yards shall be a rear yard.

3.2.8 Minimum Lot Width

In any district, the minimum width of the lot at the building shall be measured as the shortest distance between side lot lines taken through each dwelling or main non-residential structure on said lot.

3.2.9 Irregular Lots - Side Lot Lines

In the event of an irregularly shaped lot and a question as to the identification of the appropriate side lot lines for measurements, the matter shall be decided by the Building Inspector with the advice of the Planning Board.

3.2.10 Front Yard Measurements

Front yards shall be measured from the street line to the nearest point of the front wall of any dwelling or any structure, provided that nothing shall prevent the projection of uncovered steps, cornices, window sills and other ornamental features, nor the construction of walls or fences which do not interfere with vision at the intersection of two (2) or more streets.

3.2.11 Building Setback - Modifications

Where existing buildings on adjacent lots are set back less than the minimum required in the district in which they are located, a new building may be located at the average setback of the adjacent existing buildings. A vacant lot is counted as though occupied by a building set back at the minimum setback line in the district in which it is located.

3.2.12 Accessory Buildings

Accessory buildings shall only be allowed in side or rear yards and shall conform to the minimum setback requirements for principal buildings in the district in which they are located. Accessory buildings may be permitted in front yards, subject to minimum setback requirements, upon issuance of a Special Permit by the Zoning Board of Appeals. Subject to issuance of a building permit however, one (1) shed, one hundred twenty (120) square feet or smaller and a maximum height of fifteen (15) feet above mean ground level, and/or one (1) above-ground swimming pool, or any part or accessory thereof,

shall be located no closer than five (5) feet to a rear or side boundary line of the lot on which they are to be located in Districts R-1, R-2, R-3, C-2, and I. In District R-R, one (1) shed, one hundred twenty (120) square feet or smaller and a maximum height of fifteen (15) feet above mean ground level, and or one (1) above-ground swimming pool, or any part or accessory thereof, shall be located no closer than fifteen (15) feet to a rear or side boundary line of the lot on which they are to be located.

3.2.13 Corner Lot Road Visibility

Within an area formed by the side lines of intersecting street right of ways or pavement, walkways and driveways; and a line joining points on such lines twenty-five (25) feet distant from their point of intersection, or in the case of a rounded corner, from the point of intersection of their tangents, no structure shall be erected and no foliage maintained between a height of three and one-half (3½) feet and a height of eight (8) feet above the plane through their curb grades.

3.2.14 Principal Buildings

There shall not be more than one principal building on a lot in residential zones except by Special Permit of the Planning Board.

4. SPECIAL REGULATIONS

4.1 Multi-Family Housing - Special Permit

Under a Special Permit issued by the Planning Board multi-family housing may be developed in accord with the table of uses.

For multi-family housing of three (3) units or more the density requirements are as follows:

- R-R 100,000 sq. ft. for the first unit plus 60,000 sq. ft. for each additional dwelling unit.
- R-1 60,000 sq. ft. for the first unit plus 40,000 sq. ft. for each additional dwelling unit.
- R-2 40,000 sq. ft. for the first unit plus 30,000 sq. ft. for each additional dwelling unit.
- R-3 30,000 sq. ft. for the first unit plus 15,000 sq. ft. for each additional dwelling unit.
- C-1 20,000 sq. ft. for the first unit plus 15,000 sq. ft. for each additional dwelling unit.

Such development may contain more than one building on a lot. No principal building may contain more than six (6) units. Where the development contemplates the clustering of such multi-family buildings, the applicant must also satisfy the provisions of Sections 4.2.1 through 4.2.16, inclusive. The Planning Board shall also be guided by Section 4.2.17 in issuing a Special Permit for such clustering of multi-family buildings.

4.1.1 Procedures

The procedures for submission, referral, review, public hearing and approval or denial shall conform to those outlined below under 4.2 Cluster Residential Housing - Special Permit.

No request for a Special Permit shall be granted until the Planning Board has made the following findings:

- a. The proposed construction or use is consistent with the general purpose of these Bylaws; and
- b. The proposed use or construction will not impair the integrity of the district and adjoining districts; and
- c. The proposed construction or use will not be detrimental to the health and welfare of the occupants and users thereof, and the citizens of the Town; and
- d. The proposed construction or use will not be detrimental to the value of nearby property; and
- e. That adjoining public ways are adequate and sufficient to accommodate anticipated extra traffic generated by proposed construction or use and that the proposed construction or use will not create safety hazards; and
- f. The proposed construction or use will not adversely affect quantity or quality of water supply from private or public wells.

4.1.2 Special Conditions

In granting a Special Permit the Planning Board may impose such conditions as it may deem necessary to assure compliance with the goals of this Bylaw.

4.2 Cluster Residential Housing - Special Permit

Definition of Cluster Residential Housing (CRH) as follows:

Under Massachusetts General Law (MGL), Chapter 40A, Section 9, a Cluster Development shall mean a "residential development in which the buildings and their accessory uses are clustered together into one or more groups separated from adjacent property and from other groups within the development by intervening open land". To achieve the above, one or more residential clusters of greater local density than is otherwise permitted will be allowed, in a manner which creates an overall average density for the tract as a whole no greater than would occur under conventional subdivision development of the same tract. The land not included in the building lots shall remain as open space.

4.2.1 Applicability

Single tracts of land in one ownership consisting of ten (10) acres or more in the R-R district, or six (6) acres or more in the R-1, R-2, and R-3 districts, and to contain more than four (4) principal dwelling buildings, may be developed as Cluster Residential Housing (CRH) in place of the standard subdivision.

Development under this section requires a special permit and may also require subdivision approval under MGL, Ch. 41, by the Planning Board, as well as compliance with all requirements, provisions and conditions of the Shirley Zoning Bylaw.

4.2.2 Purpose

- a. To encourage the more efficient and economical use of land in harmony with its natural features, while preserving the overall density and the rural and historical character of the Town;
- b. To encourage the protection preservation of natural resources, including public and private groundwater supply;
- c. To encourage maximum flexibility and creativity in the design of developments;
- d. To encourage a less sprawling form of development with a shorter network of streets and utilities and other similar public installations, more rational development of land with less consumption of open space and focused on those portions most suitable for construction;
- e. To preserve to a maximum extent natural topography and woodlands, and to provide open land for conservation, agricultural, and outdoor recreational uses and recreational facilities close to homes;
- f. To implement the intent of the Town's Master Plan and Open Space Plan;
- g. To provide a more efficient procedure to ensure appropriate high quality design and site planning to enhance the neighborhood in which the development occurs and the Town as a whole;
- h. To promote diverse housing with consideration of size, cost, and other factors;
- i. To provide small residential communities within Shirley with opportunity for mutual support and shared responsibilities, yet with direct access to open land.

4.2.3 Use and Dimensional Standards

- a. The shape, dimensions and other aspects of the tract shall be sufficient to provide for open land, at least one cluster, and meet all other requirements of this section and of the Shirley Zoning Bylaw.

- b. A one-family detached dwelling, a two-family detached dwelling (duplex), or a multi-family dwelling or other lawful accessory building may be constructed on certain lots in a cluster development (as herein defined and limited) although such lots have less area, frontage, and/or rear and side yard dimensions than required under sections 3.1 and 4.1 above. Lots may be reduced in area from the minimum standard size requirement of the zoning district in which the tract is located, as approved by the Planning Board.
- c. Dwellings, accepted recreation facilities serving the development, maintenance facilities, accessory uses and facilities incidental to the principal uses may be situated on a single lot or on separate lots or on open land as approved by the Planning Board.

4.2.4 Maximum Number of Dwelling Units

The maximum number of dwelling units allowed on any tract shall be equivalent to the number of buildable lots into which the tract could be divided under normally applicable zoning and subdivision regulations within the given density zone, considering the whole tract, exclusive of water bodies, wetlands, and land prohibited from development by legally enforceable restrictions, easements or covenants. As used herein a buildable lot shall also contain sufficient and suitable percable area to site an in-ground septic disposal system. The number of dwelling units in multi-family cluster shall be as herein or as computed pursuant to Section 4.1 or a per building basis, whichever is less.

These buildable lots shall be shown on a preliminary "paper" subdivision plan conforming to the requirements of the Town of Shirley's "Subdivision Rules and Regulations". Such Preliminary Plan shall include a perimeter survey prepared by a registered land surveyor, location of wetlands delineated by a botanist or by the Shirley Conservation Commission and topography based on the most recent USGS map. The applicant shall demonstrate to the satisfaction of the Board and its consultants that the "paper" plan is "buildable" without extraordinary engineering techniques. The Board's determination of the Basic number of units shall be conclusive for all purposes.

4.2.5 Dimensional Requirements

- a. See footnote (l) under Section 3.1;
- b. A single cluster within any development shall be limited to a maximum of eight (8) multi-family or two-family principal buildings or sixteen (16) single family houses;
- c. No building shall be more than thirty-five (35) feet in height;
- d. A buffer zone of open land shall be maintained between building clusters and abutting land outside the project. A buffer shall also be left in its natural state or suitable landscaped to provide adequate screening toward the existing street. These buffer zones shall be maintained as dedicated open land or as privately owned lots with a fifty (50) foot depth in the R-R and R-1 districts and a forty (40) foot in the R-2 and R-3 districts. Minimum distance between all principal buildings shall be thirty (30) feet, and between each group of abutting clusters there shall be seventy-five (75) feet;
- e. Each lot shall be of a size and shape as shall provide a building site which shall be in harmony with the natural terrain and other features of the tract, provided that in no case shall the access frontage on a subdivision road be reduced below seventy-five (75) feet in the R-R district and fifty (50) feet in the R-1, R-2 and R-3 districts, and not less than forty (40) feet on turning circles or dead end streets in all zoning districts. There shall be no access to individual lots from existing public way;
- f. The front, side and rear yards of each lot shall be shown on said plan by dashed lines indicating the area within which a building may be built;

- g. Any parts of the tract lying within a W-1 or W-2 Water Overlay District zone shall not be built upon.

4.2.6 Design Requirements

- a. Vehicular and Pedestrian Circulation: primary routes shall be clearly differentiated from secondary routes and driveways; conflicts shall be minimized between vehicular routes and pedestrian routes and recreation areas;
- b. Screening: layout and design shall respond to needs for visual and audible privacy between and around dwelling units, and in all required buffer zones;
- c. Utilities and Services: utility lines shall be underground. Dumpsters shall be located in convenient locations, visually screened, and shall not impede pedestrian or vehicular circulation. The installation and location of drainage systems shall not impede access to common land;
- d. Protection of Environmentally Sensitive Areas: for the protection of aquifers, wetlands, or other environmentally sensitive areas, the Board may reduce the number of units otherwise allowed;
- e. Building Siting: the Planning Board shall review and approve the sites of all buildings, structures, driveways and parking areas for each lot and may establish footprints for all buildings within a cluster project. Privacy between units shall be a consideration;
- f. The housing shall be planned and developed to harmonize with any existing or proposed development in the area surrounding the project site;
- g. Treatment of the sides and rear of all buildings within the development shall be compatible in amenities and appearance to the treatment given to street frontages of these same buildings;
- h. The architectural theme of a multi-family building shall be carried out by use of compatible building materials, color, exterior detailing, bulk and articulation of roof lines to reduce scale and maintain compatibility with surrounding single family dwellings;
- i. No dwelling unit in any building of three (3) or more dwelling units shall be designed, constructed or altered to have more than three (3) bedrooms.

4.2.7 Landscape Design Standards

- a. A maximum of one-third (1/3) of the Residential Cluster Development, exclusive of dedicated common open land may be covered by impervious surface;
- b. Whenever appropriate, existing trees and vegetation shall be preserved and integrated into the landscape design plan. Suitable indigenous shrubs and other plant material may be used for screening;
- c. Whenever possible, the existing terrain shall be preserved and earth moving or removal shall be kept to a minimum;
- d. For active recreation areas, the Planning Board may require a fifty (50) foot buffer zone around such area(s);
- e. Lands used as buffers may be retained as common open space or as private open space subject to a deed restriction.

4.2.8 Road, Parking and Circulation Standards

- a. Roads must be constructed to the standards established by the Subdivision Regulations of the Planning Board except as may be specifically waived by said Board;
- b. There shall be adequate, safe and convenient arrangement of pedestrian circulation facilities, roadways, driveways and off-street parking;
- c. Off-street parking shall conform to the provisions of Section 5 of the Zoning Bylaw;
- d. Parking facilities shall be designed with careful regard to arrangement, topography, landscaping, ease of access, and shall be developed as an integral part of an overall site design.

4.2.9 Common Open Space

- a. Provision shall be made so that at least thirty-five (35) percent of the land area shall be open land and that open land shall include all land not dedicated to parking, roads or individual lots;
- b. Areas which are considered by the Planning Board as marginal or unsuitable for building may be included in the permanent open space; but, not more than thirty-five (35) percent of the required open space shall consist of such marginal or unbuildable areas. At least ten percent (10%) shall consist of land suitable for recreational purposes;
- c. Open spaces may be utilized as natural courses for disposal for storm drainage on the sites. No conditions shall be allowed which are likely to cause erosion or flooding of any structures;
- d. Such open space may be in one or more parcels of a size and shape appropriate for its intended use as determined by the Planning Board, and shall be within easy access to all residents of the Residential Cluster development.

4.2.10 Ownership of Common Open Space

- a. The open land, and such other facilities as may be held in common shall be conveyed in one of the following manners, as approved by the Planning Board:
 - 1. To a corporation or trust comprising a homeowner association whose membership includes the owners of all lots or units contained in the tract. The developer shall include in the deed to owners of individual lots or units beneficial rights in said open land, and shall grant a conservation restriction to the Town of Shirley over such land pursuant to MGL, Ch. 184, Sec. 31-33, to insure that such land be kept in an open or natural state and not be built upon for residential use or developed for accessory uses such as parking or roadways. This restriction shall be enforceable by the Town through its Conservation Commission in any proceeding authorized by MGL, Ch. 184, Sec. 33. In addition, the developer shall be responsible for the maintenance of the common land and any other facilities to be held in common until such times as the homeowners association is capable of assuming said responsibility. In order to ensure that the association will properly maintain the land deeded to it under this section, the developer shall cause to be recorded at the Middlesex Registry of Deeds a Declaration of Covenants and Restrictions which shall, at a minimum provide the following:
 - a. Mandatory membership in an established homes association, as a requirement of ownership of any lot in the tract;
 - b. Provisions for maintenance assessments of all lots or units in order to ensure that the open land is maintained in a condition suitable for the uses approved by the homes association. Failure to pay such assessment shall create a lien on the property assessed, enforceable by either the homes association or the owner of any lot;

- c. Provision which, so far as possible under existing laws, will ensure that the restrictions placed on the use of the open land will not terminate by operation of law;
 - d. The right of the homeowners association to limit open space to its members.
2. To a non-profit organization, the principal purpose of which is the conservation of open space. The developer or charity shall grant a conservation restriction as set out above. Maintenance will be the responsibility of the recipient organization;
 3. To the Town for park or open space use, subject to the approval of the Selectmen for management by the Conservation Commission, with a trust clause insuring that it be maintained as open space.

4.2.11 Other Open Space Uses

Subject to the above, the open space may be used for recreational purposes including golf courses, riding trails, tennis courts, gardens and swimming pools. The Board may permit open land owned by a homeowners association to be used for individual septic systems, or for communal septic systems if it, and the Board of Health, are convinced that proper legal safeguards exist for proper management of a communally owned system. The Planning Board shall require adequate insurance and covenants that such facilities shall be maintained by the unit owners.

4.2.12 Driveways

Driveways shall be owned and maintained by the homeowners association, otherwise by individual unit owners served by those driveways.

4.2.13 Further Requirements in Clustered Residential Housing

- a. No use other than residential or recreational shall be permitted;
- b. No lot shown on a plan for which a permit is granted under this section may be further subdivided, and a notation to this effect be shown upon the plan;
- c. No certificate of occupancy shall be issued by the Building Inspector until he has certified to the Planning Board that the premises have been built according to the plan approved by the Board hereunder;
- d. The Planning Board may impose other conditions, safeguards, limitations on time and use, pursuant to its regulations;
- e. Except insofar as the subdivision is given five (5) years' protection under MGL, Ch. 40A, Sec. 6, the Special Permits granted under this section shall lapse within two (2) years excluding time required to pursue or await the determination of an appeal from the grant thereof, if a substantial use has not sooner commenced or if construction has begun, except that the Planning Board may grant an extension for good cause;
- f. Subsequent to granting of the permit, the Planning Board may permit relocation of lot lines within the individual cluster. However, any change in overall density, street layout or open space layout will require a further hearing;
- g. Except as specified in a Special Permit granted under this section, all requirements of the Zoning Bylaw shall be in full force and effect;

- h. In the interest of water supply protection, the Planning Board may impose, on a case-by-case basis, specific design and/or performance standards necessary to ensure that the proposed use is in harmony with the stated purposes of this Bylaw. Periodic monitoring may be required by the Board as a condition of the Special Permit. Such monitoring may include sampling of the wastewater disposed to on-site septic systems or drywells and sampling from ground water monitoring wells to be located and constructed as specified in the Special Permit. Reports shall be submitted to the Planning Board and to the Board of Health annually, and the costs shall be borne by the owners of the premises.

4.2.14 Procedure

To afford the Town of Shirley ample assurance that such developments will enhance the amenities of the neighborhoods in which they occur, and the Town as a whole, Cluster Residential Housing may only be constructed under a Special Permit granted by the Planning Board as hereinafter defined.

Applications for a Cluster Development Special Permit shall be submitted in accordance with the requirements specified below:

1. Preview: before submitting a formal application for a Special Permit under this article, the applicant is encouraged to meet informally with the Planning Board, Board of Health and the Conservation Commission together or separately to present informally the general concept of the development, and hear the concerns of the Town that should be considered in the design of the development;
2. Filing Application: Each application for a Special Permit to cluster shall be filed with the Planning Board, with a copy filed forthwith with the Town Clerk, and shall be accompanied by **twelve (12)** copies of the plan of the entire tract under consideration, prepared by a registered professional architect, engineer or landscape architect. The Planning Board requires a separate filing under its subdivision control law where necessary. A Special Permit issued hereunder by the Planning Board shall not be a substitute for compliance with the Planning Board Rules and Regulations or the Subdivision Control Act. However, in order to facilitate processing, the Planning Board may accept a combined plan and application which shall satisfy this section, the Planning Board Rules and Regulations and the Subdivision Control Act.

4.2.15 Contents of Application

The application and plan shall be prepared in accordance with the requirements for a subdivision plan in the Rules and Regulations of the Planning Board governing subdivision of land, whether or not the development constitutes a subdivision and shall include proposed location, bulk, and height of all proposed buildings. The applicant shall provide the following:

- a. The "paper" plan as specified in 4.2.4 above;
- b. A cluster plan indicating the location of proposed buildings, roads, driveways, parking, drainage, reserved open space, wells, on-site sewage disposal facilities, grading, wetlands, areas of retained vegetation and perimeter buffer areas and planting;
- c. An analysis of the site, including wetlands, slopes, soil conditions, areas within the Hundred Year Flood, trees over eight (8) inches diameter in the development area and such other natural features as the Planning Board may request;
- d. Sketch floor plans and architectural elevations of typical dwellings proposed, including building material, building and site landscaping, streets, drives and parking provisions;
- e. Drafts of any proposed deeds, easements and/or restrictions including:

1. Proposed deed for transfer of dedicated land in fee simple to the municipal/state/federal/or private non-profit organization; or alternately,
 2. Proposed covenants and restrictions as detailed in Sec. 4.2 to secure the permanent legal existence of dedicated open land. Approval of a cluster development plan shall require the approval by the Planning Board of said covenants or restrictions.
- f. An environmental impact analysis related to the proposed plan, as defined by the Planning Board's Subdivision Rules and Regulations for a subdivision plan;
 - g. A description of the neighborhood in which the tract lies, including utilities and other public facilities, and the impact of the proposed plan upon them;
 - h. Evaluation of the dedicated open space proposed within the cluster development, with respect to size, shape, location, access, natural resource value and accessibility by residents of the development or the Town;
 - i. Anticipated marketing and construction schedules;
 - j. Management program outlining the community organization, if any, and the transition procedure from developer management to community association management;
 - k. Appropriate documentation demonstrating the applicant's right to develop the property;
 - l. Engineering data showing effects both on and off site of the proposed development on natural recharge of the groundwater, yield from abutter's private wells and quality of surface and groundwater. Information on impact on groundwater quality should include data on groundwater runoff, recharge, background water quality, on-site septic systems and other on-site operations, including use of pesticides, fuel, toxic materials, hazardous materials and fertilizers used in conjunction with the proposed development;
 - m. The Planning Board may at its discretion modify some of the requirements of Section 4.2 which could be detrimental to design flexibility related to a specific site, or might be excessive on small projects;
 - n. Review by other boards: before acting upon the application, the Board shall submit plan documents to related boards, which may review it jointly or separately, including the Board of Health, and the Conservation Commission. Any such board or agency to which petitions are referred for review may submit such recommendations as it deems appropriate to the Planning Board. Failure to make recommendations within thirty-five (35) days of receipt shall be deemed lack of opposition;
 - o. Public Hearing: the Planning Board shall hold a hearing under this section, in conformity with provisions of the MGL, Ch. 50A, Sec. 9, and of the Zoning Bylaw and regulations of the Planning Board. The hearing shall be held within sixty-five (65) days after filing of the application and plans with the Board and the Town Clerk. Notice shall be given by publication, posting and by first-class mailings to parties in interest as defined in MGL, Ch. 40A, Sec. 11. The decision of the Board and any extension, modification or renewal thereof, shall be filed with the Board and Town Clerk within ninety (90) days following the closing of the public hearing. Failure of the Board to act within ninety (90) days shall be deemed a grant of the Special Permit. Issuance of the Special Permit requires approval by vote of four (4) voting members.
 - p. Findings of the Board:
 1. The Board may grant a Special Permit for a Cluster development project under this section only if it finds that the applicant has demonstrated the following: that the cluster plan will be in

harmony with the general purpose of the Zoning Bylaw and meets all its relevant requirements as well as those of MGL, Ch. 40A, and the Shirley Master Plan; that it will not have a detrimental impact on the neighborhood, will be designed with due consideration for health and safety, and is superior to a conventional plan in reserving open space, minimizing environmental disruption, allowing for more efficient provisions of services, or allowing for greater variety in prices of types of housing, including affordability;

2. In connection with issuing or denying a Special Permit under this section, the Planning Board shall issue to the applicant and shall file with the Town Clerk a written decision which shall include:
 - a. Reference to the proposed cluster development application and its plans;
 - b. A finding that the plan is or is not in harmony with the purposes and intent of the Zoning Bylaw, especially this section;
 - c. A list of any conditions imposed by the Planning Board.
3. Reasons, if any, of the Planning Board disagreement with the recommendations of the Conservation Commission or the Board of Health;
4. No building permit shall be granted for any building in the cluster development until all documents required, including prepared deeds, easements, covenants, and/or restrictions have been submitted to and approved by the Planning Board: and further that all documents including the Special Permit and Definitive Plans, if any, have been recorded in the Registry of Deeds and proof of the recordations furnished to the Planning Board.

4.3 Hammerhead Lots - Special Permit

Parcels located in residential districts with frontage on a public way which was in existence at the time of the original adoption of this Section 4.3, may be divided into hammerhead lots for use by single family dwellings only under alternative lot area and frontage regulations as approved by the Planning Board.

Special Permit approval will be granted by the Planning Board if it finds that:

1. The standards described in this section have been met;
2. The hammerhead development will carry out the goals of the Shirley Master Plan;
3. Efficient current and future use of land will be encouraged;
4. The scenic and natural resources of Shirley will be protected; and,
5. Adequate access to the lot is provided and the public safety, including that of the lot inhabitants, is protected.

Once approved as a hammerhead lot, such lot shall not subsequently be approved for other than single family use by variance or Special Permit nor be subdivided.

4.3.1 Development Standards

It is the intent to allow for optional limited development of deep back-land lots subject to the following standards for individual lots:

- a. Land area minimums of five (5) acres in the R-R District, three (3) acres in the R-1 District and two (2) acres in the R-2 and R-3 Districts;

- b. Access frontage of at least fifty (50) ft. suitable for an access driveway;
- c. Access corridor width of at least thirty-five (35) ft.;
- d. Lot width at the building of at least 400 ft. in the R-R District, 300 ft. in the R-1 District and 200 ft. in the R-2 and R-3 Districts;
- e. Distance between any two (2) principal dwellings not less than the lot width under (d) above; and,
- f. A shape capable of containing a circle having a diameter equal at least to the minimum required lot width within which any building shall be located set back at least sixty (60) ft. from any property boundaries.

4.3.2 Spacing

It is the intent of this section to discourage continuous double or triple layers of lots comprised of standard lots along the street and parallel lines of hammerhead lots. In order to provide for a proper spacing of hammerhead lots the following standards shall apply:

- a. Each access drive serving one hammerhead lot shall not be closer to any other hammerhead lot access drive (measured at and along a street line) than 900 ft. in the R-R District, 525 ft. in the R-1 District and 450 ft. in the R-2 and R-3 Districts;
- b. Each access drive serving two (2) hammerhead lots shall not be closer to any other hammerhead lot access drive (measured at and along a street line) than 1,800 ft. in the R-R District, 1,050 ft. in the R-1 District and 900 ft. in the R-2 and R-3 Districts; and,
- c. Where the hammerhead lot is located in two (2) districts the measurement required for the more restrictive district shall apply in a. and b. above.

4.3.3 Access Driveways

Access driveways serving hammerhead lots shall meet the following minimum standards:

- a. Width of at least twelve (12) ft., but shall be cleared to a width of at least eighteen (18) ft.;
- b. Maximum grade of ten percent (10%);
- c. Centerline radius of at least eighty (80) ft.;
- d. A length such that the distance along the driveway centerline to each principal building on the premises will not exceed 1,000 ft., from the street sideline;
- e. Passing turnouts providing a total width of at least fifteen (15) ft. along a distance of at least twenty-five (25) ft., spaced with no more than 300 ft. between turnouts and with the first such passing turnout at the driveway connection to the street;
- f. Provision for turnaround space available for use in all seasons capable of serving all vehicles including moving vans, ambulances, fire engines and police vehicles;
- g. At most three (3) lots may be connected to or otherwise share the same access driveway, of which no more than two (2) may be hammerhead lots;

- h. A recorded clear provision for all shared driveways and running with the land establishing clear responsibilities for maintenance and snow removal; and,
- i. A location entirely within the lot or lots being served.

4.3.4 Driveway Site Plan Approval

A Building Permit for a single-family residence located on a hammerhead lot shall be issued only upon receipt of a written statement from the Planning Board indicating a satisfactory driveway and turnaround consistent with the standards of Section 4.3 has received site plan approval.

The driveway site plan shall be prepared in accordance with provisions adopted by the Planning Board.

The Planning Board may consider the construction of a driveway or its extension "satisfactory" for the purpose of said written statement if it has approved a site plan for the construction of the driveway and if drainage, utilities, erosion control measures, base gravel and the first course of any bituminous concrete that may be required are all in place.

A driveway site plan approval shall expire if the work thereunder is not begun within two (2) years after issuance and diligently pursued to completion.

4.3.5 Occupancy Permit

No Occupancy Permit for a residence constructed on a hammerhead lot shall be issued until the Planning Board certifies in writing that the access driveway, including permanent turnarounds, has been completed in accordance with the standards specified in the driveway site plan approval.

4.4 Mobile Homes

Mobile homes or similar mobile structures shall not be parked, stored, or occupied for living or business purposes, except:

- 4.4.1 If granted a temporary permit by the Building Inspector, a mobile home or mobile structure may be occupied incidental to construction or rebuilding of a permanent structure on the premises for a period not to exceed twelve (12) months. Any such mobile home or mobile structure shall be subject to the provisions of the state sanitary codes.

4.5 Accessory Apartments - Special Permit

An owner or owners of a one family dwelling may apply for a Special Permit from the Board of Appeals for the construction and occupancy of one accessory apartment in such one family dwelling provided such one family dwelling was constructed at least ten (10) years prior to the date of application. It is not the intent of this Bylaw to permit or encourage the building of new dwellings which are large enough to contain apartments.

In accordance with the procedures of Section 9.2.3, the Board of Appeals may grant such Special Permit provided that:

- 4.5.1 Due consideration has been given to the reports and recommendations of the Planning Board and Board of Health;
- 4.5.2 Adequate provision has been made for the disposal of sewage generated by the occupancy of such apartment in accordance with the requirements of the Board of Health;

- 4.5.3 No more than minimum exterior alterations are proposed. In general, any new entrances shall be located on the side or rear of the building, and any additions shall not increase the square footage of the one family house by more than ten percent (10%);
- 4.5.4 The design and size of the apartment conforms to all applicable standards in the health, building and other codes;
- 4.5.5 The owner(s) of the residence in which the accessory unit is created shall occupy at least one of the dwelling units in the premise, except for bonafide temporary absences;
- 4.5.6 Parking must conform to the requirements of this Bylaw.

4.6 Home Occupation - No Special Permit

Home occupations shall be allowed without need for a Special Permit only if meeting all of the following:

- 4.6.1 The occupation shall be operated by a person residing on the premises, and shall employ on those premises not more than three (3) persons not resident thereon;
- 4.6.2 There shall be no evidence of the occupation through persistent or excessive sound, or through vibration, smell, or sight discernable at the boundaries of the premises, except for a sign as permitted in Sec. 6, MGL, or for display of produce raised on the premises;
- 4.6.3 Any exterior storage of materials or equipment or business-related parking shall be so located and screened (through location, grade, or vegetative screening), as to be in compliance with Section 4.6.2 above;
- 4.6.4 Not more than two (2) vehicles requiring registration as taxis, buses, or commercial vehicles shall be regularly parked outdoors on the premises. Such vehicles shall not weigh more than 15,000 lbs. or have more than two (2) axles;
- 4.6.5 Traffic generated shall not be more disruptive to the neighborhood than traffic normally resulting from residential development considering volume, type, hours and other traffic characteristics;
- 4.6.6 The occupation shall be conducted within a dwelling or accessory structure and occupy not more than twenty-five percent (25%) of the combined total floor area, and shall be in conformance with the Use Regulations.

4.7 Home Occupation - Special Permit

A Special Permit from the Board of Appeals shall be required for anything in excess of Section 4.6.

A Special Permit may be granted beyond these limits only if the Board of Appeals determines that the activities will not create hazard, disturbance to any abutter, or injury to the neighborhood, and will not create unsightliness visible from any public way or neighboring property.

Such Special Permit shall impose conditions and limitations as necessary to protect abutting properties and the public, including the limitation that the home occupation authorized by the Special Permit may not be transferred to a different operator without a new Special Permit, that the occupation shall be subject to compliance review by the Building Inspector at periods specified in the Special Permit, and that such permit may be revoked by a majority vote of the Board of Appeals at any time after notice and hearing, upon the Board's determination that the terms of the Special Permit are being violated.

4.8 Home Occupation - Enforcement

Home occupation uses shall be enforced as follows:

- 4.8.1 A certificate of Use and Occupancy must be obtained from the Building Inspector indicating compliance with these requirements prior to initiation of a home occupation.
- 4.8.2 The Building Inspector shall enforce these provisions and any person may request enforcement where a violation is believed to exist, as provided in Sec. 7 of Ch. 40A, MGL, and if dissatisfied with the outcome, such person may bring an appeal to the Board of Appeals for hearing and action as provided in Sec. 8 of Ch. 40A, MGL.

4.9 Accessory Uses

Accessory uses shall be on the same lot with the building of the owner or occupant except as otherwise provided herein and shall not alter the character of the premises on which they are located nor impair the neighborhood.

Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development, may be permitted upon the issuance of a Special Permit provided the Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.

4.10 In-law Apartment No Special Permit

4.10.1 General

It is the intent of this Section to provide for the use of a portion of a single-family residence as a so-called "In-law apartment", which use will be solely for the benefit of a family member related either by blood, marriage or law. The In-law section of the residence shall be attached to the existing residence and shall share access to common areas by means of doorways or openings. It is the further intent of this Section that the structural changes, if any, necessary to effect the In-law apartment use shall be sufficiently modest that such use can be terminated and a single family occupancy of the entire premises restored without substantial hardship in reconstruction.

A Building Permit for an In-law apartment shall be issued only upon meeting all the requirements of this Section.

4.10.2 Approval by the Board of Health

Evidence verified in writing by the Board of Health (or its qualified agent) that there is available on the lot an adequate supply of drinking water and adequate provision for sewage disposal shall be submitted with, and as part of the application for Building Permit.

4.10.3 Maximum Allowable Size

The gross floor area of the In-law apartment shall not exceed 25% of the existing residence prior to approval of the Building Permit. All new construction or additions for the In-law use shall have a limit of 500 square feet.

4.10.4 Criteria for Approval

Prior to the granting of a Building Permit for an In-law apartment, all of the following requirements must be met. Documentation must be submitted to the Building Inspector at the time of the application for a Building Permit. No exceptions or variances will be granted from these requirements.

- a. Adequate off street parking shall be provided for the user of the In-law apartment. There shall be a minimum of one additional space for the In-law use.
- b. All utilities associated with the existing single-family residence shall be shared with the In-law use including gas, electric, sewer, septic, water and heating.
- c. The owner of the single-family residence must occupy one of the living areas.
- d. The maximum number of persons to occupy an In-law apartment shall be limited to two (2).
- e. The outside appearance of the premises shall remain that of a single-family residence.
- f. All applicable Federal, State and Local Building and Health codes must be satisfied.
- g. Only one In-law apartment shall be allowed per single-family residence.
- h. An In-law apartment shall be limited to one (1) bedroom.
- i. An In-law apartment may only be created in a dwelling which would otherwise be classified as a single-family dwelling located on its own lot, in the R-R, R-1, R-2 and R-3 zoning districts.
- j. All construction shall meet set back requirements of the zoning district where the building is located.

4.10.5 Inspection for Compliance

The Building Inspector may order an inspection of the premises for compliance hereunder at any time upon reasonable written notice to the homeowner.

4.10.6 Termination of Use

Should an In-law apartment which was created under the terms of this Section fail at any time to meet the conditions above, the occupancy shall cease and the premises shall revert to those of a single-family residence. It is not the intent of this Section to have any In-law apartment created become rental property in the future.

4.11 Mining, Quarrying, and Removal of Loam, Sand, and Gravel

Mining and quarrying and the removal of loam, sand, and gravel or other earth products is permitted in all districts only in accordance with permits issued by the Board of Selectmen under Article XI of the Town Bylaws.

It is the intention of this Bylaw that the removal of earth materials from any parcel of land for which a preliminary or definitive subdivision plan has been prepared shall be allowed only in the same manner as removal from other parcels of land in the Town. Consequently, tentative or final approval of a subdivision plan by the Planning Board shall not be construed as authorizing the removal of material from the premises, even through in connection with the construction of streets shown on the plan.

4.12 Flood Plain Protection Overlay District

4.12.1 Purpose

The purposes of the Flood Plain District are to protect the public health, safety, and general welfare, to protect human life and property from the hazards of periodic flooding, to preserve the natural flood

control characteristics, and the flood storage capacity of the flood plain, and to preserve and maintain the ground water table and water recharge areas within the flood plain.

4.12.2 District Delineation

The general boundaries of the Flood Plain District are shown on the Town of Shirley Flood Insurance Rate Map (FIRM), in seven (7) panels, dated July 5, 1983, as Zones A, A 1-30 to indicate the 100 year flood plain. The exact boundaries of the District are defined by the 100 year water surface elevations shown on the FIRM and further defined by the Flood Profiles contained in the Flood Insurance Study, dated January 5, 1983. The floodway boundaries are delineated on the Town of Shirley Flood Boundary Floodway Map (FBFM), dated July 5, 1983, and further defined by the Floodway Data Tables contained in the Flood Insurance Study. These two (2) maps as well as the accompanying Study are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Conservation Commission, Board of Assessors, and Building Inspector and Zoning Enforcing Officer.

Within Zone A, where the 100 year flood elevation is not provided on the FIRM, the developer/applicant shall obtain any existing flood elevation data and it shall be reviewed by the Building Inspector. If the data is sufficiently detailed and accurate, it shall be relied upon to require compliance with this Bylaw and the State Building Code.

4.12.3 Use Regulations

The Flood Plain District is established as an overlay district to all other districts. All development, including structural and non-structural activities, whether permitted by right or by Special Permit must be in compliance with Ch. 131, Sec. 40, MGL, and with the requirements of the Massachusetts State Building Code pertaining to construction in the flood plains (currently Section 744).

Permitted Use - The following uses of low flood damage potential and causing no obstructions to flood flows shall be allowed provided they are permitted in the underlying district and they do not require structures, fill, or storage of materials or equipment:

- a. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.;
- b. Forestry and nursery uses;
- c. Outdoor recreational uses, including fishing, boating, play areas, etc.;
- d. Conservation of water, plants, wildlife;
- e. Wildlife management areas, foot, bicycle, and/or horse paths;
- f. Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises; and,
- g. Buildings lawfully existing prior to the adoption of these provisions.

4.12.4 Special Permits

No structure or building shall be erected, constructed, substantially improved, or otherwise created or moved; no earth or other materials stored, dumped, filled, excavated, or transferred, unless a Special Permit is granted by the Board of Appeals. Said Board may issue a Special Permit hereunder (subject to other applicable provisions of this Bylaw) if the application is compliant with the following provisions:

- a. The proposed use shall comply in all respects with the provisions of the underlying Districts;

- b. Within ten (10) days of receipt of the application, the Board shall transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Building Inspector and Zoning Enforcing Officer. Final action shall not be taken until reports have been received from the above Boards or until thirty-five (35) days have elapsed;
- c. All encroachment, including fill, new construction, substantial improvements to existing structures, and other developments are prohibited unless certification by a registered professional engineer is provided by the applicant demonstrating that such encroachment shall not result in any decrease in flood storage capacity or increase in flood levels during the occurrence of the 100 year flood;
- d. The Board may specify such additional requirements and conditions it finds necessary to protect the health, safety, and welfare of the public and the occupants of the proposed use;
- e. A determination has been made that the use will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws; and,
- f. The applicant has established that the land is not unsuitable for the proposed use, based on hydrological/topographic data supplied by a registered professional engineer.

Nothing contained in this section shall excuse compliance with the Wetlands Protection statutes, MGL, Ch. 131, Sec. 40 and 40A or any other laws of the Commonwealth of Massachusetts.

4.12.5 Excluded Uses

(The following uses shall not be allowed:)

- a. Dumping of refuse or solid waste including but not limited to tires, refrigerators, and motor vehicles or parts of any of the foregoing;
- b. Storage, either permanent or temporary, of any hazardous, toxic, radioactive, or de-icing material.

4.12.6 Definitions: For the purposes of this section, the following terms shall be defined as follows:

Flood Plain Protection District - An area subject to periodic flooding, the limits of which are defined by the 100 year flood contour elevation.

Flood - A temporary rise in river, stream, or brook flow that results in water overtopping the banks and inundating over bank areas adjacent to the channel.

Floodwater Storage Capacity - The quantity of water which can be held within the Flood Plain.

100 Year Flood Elevation - The elevation of a flood which has a one percent (1%) probability of occurring in any given year.

4.12.7 Limit of Authority

Nothing contained in this amendment to the Zoning Bylaw of the Town of Shirley shall otherwise limit the lawful authority of other agencies of government within the Town of Shirley.

4.13 Water Supply and Wellhead Protection Overlay District

4.13.1 Purpose

The purpose of the Water Supply and Wellhead Protection Overlay District is to protect, preserve, and maintain present and potential sources of groundwater supply within the Town for public health, safety, and welfare.

4.13.2 District Delineation

The general boundaries of the Water Supply and Wellhead Protection District are shown as Zone I and II to indicate the different protection areas on the map entitled “Water Supply Protection District, Town of Shirley”, dated January 22, 1986, as amended. Elements of the district include present and proposed wells of the Shirley Water District and aquifers and recharge areas in the Town as determined by the hydrological study performed for the Town in 1978 by IEP, Inc. Northboro, Massachusetts and any additional wellhead delineation studies performed for or by the Shirley Water District. The exact boundaries of the District are defined in Section 4.13.6, as amended, in which elevations, road edges, distances on the ground, and other features delineating the boundaries are described. The map is hereby made a part of the District and of the Zoning Bylaws. As delineated on the amended map, the District comprises the following zones:

Zone I: Present and proposed public well sites, together with a surrounding protective circle of 800 feet in radius (measured horizontally) around the Catacunemaug Well, and 1,000 feet in radius (measured horizontally) around the Patterson Well and Walker Road, Squannacook, Cook Farm, and Bow Brook/Trophet Well sites, comprising all or part of the zones of influence.

Zone II: Aquifer and primary recharge areas supplying the Patterson and Catacunemaug Wells, and identified future well sites. These primary recharge areas have been determined by hydrological study of the geology of the area and are intended to include the aquifer recharge areas which contribute water to the wells under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of continuous pumping at safe yield with no recharge from precipitation) as defined in Massachusetts Department of Environmental Protection (“DEP”) regulation 10 CMR 22.00.

4.13.3 Definitions: For the purpose of section 4.13, the terms listed below shall be defined as follows:

Aquifer: Geological formation consisting of unconsolidated sands and gravel that contains significant amounts of potentially recoverable potable water.

Groundwater: All the water present beneath the surface of the ground. In this Bylaw the term refers to the slowly moving subsurface water present in aquifers and recharge areas.

Recharge Areas: Areas composed of permeable, porous materials that collect precipitation or surface water and transmit it to the aquifers or zones of influence.

Toxic or Hazardous Materials: Any substance or mixture of physical, chemical or infectious characteristics defined as toxic or hazardous under MGL, Chapter 21C, 21E, and 310 CMR 30.00.

Zone of Influence: The Area, which experiences drawdown by a pumping well.

Impermeable Area: [Impervious Surface]: An area on which material or a structure on, above, or below the ground does not allow precipitation or surface water to penetrate directly into the soil.

4.13.4 Use Regulations:

- a. The District is established as an overlay zone to all other districts. Any use permitted in the portions so overlaid shall be permitted subject to all the provisions of this Section and provided that all necessary permits, orders, or approvals required by local, state or federal law have been obtained. The portion of any lot delineated as being within the District may be used to meet any lot dimension requirements for the District in which the remainder of the lot is located.

- b. Permitted Uses, All Water Supply Protection Zones: The following uses characterized as having low potential for groundwater contamination and reduction in natural groundwater recharge shall be allowed in all District Zones provided they are permitted in the underlying district:
 - 1. Outdoor recreation, nature study, boating, hunting, and fishing where otherwise legally permitted.
 - 2. Boardwalks, landings, foot, bicycle, and/or horse paths and bridges.
 - 3. Proper operation and maintenance of dams, splash boards, and other water control, supply and conservation devices.
 - 4. All ordinary and customary uses associated with the maintenance and upkeep of existing buildings and grounds, including paving of existing residential driveways and sidewalks, and the replacement of structures destroyed by fire or other catastrophe, provided there is no increase in impervious cover apart from that which may be associated with paving of existing residential driveways and sidewalks.
 - 5. Necessary public utilities designed so as to prevent contamination of groundwater.
- c. Permitted Uses Zone II: The following uses with low potential for groundwater contamination and reduction of natural recharge shall be allowed within Zone II, provided they are permitted in the underlying district:
 - 1. Residential development on a minimum lot size of 80,000 square feet per unit, provided that no more than 25% of the lot may be covered with impervious surfaces.
 - 2. Expansion of impermeable area of existing buildings and grounds in addition to that which may be associated with paving of residential driveways and sidewalks, provided that the total impervious coverage shall not exceed 25% of the lot
- d. Special Permit, Zone I: The following uses with a higher potential for groundwater contamination or reduction in natural recharge shall be allowed within Zone I upon issuance of a Special Permit, provided said uses are permitted in the underlying district:
 - 1. Expansion of impermeable area of existing buildings and grounds, provided that the total impervious coverage shall not exceed 25% of the lot.
- e. Special Permit, Zone II: The following uses with a higher potential for groundwater contamination or reduction in natural recharge shall be allowed within Zone II upon issuance of a Special Permit, provided said uses are permitted in the underlying district:
 - 1. Expansion of impermeable areas of existing buildings and grounds such that the total impervious coverage exceeds 25% of the lot.
 - 2. The handling and storage of toxic or hazardous materials in quantities greater than those associated with normal, one-family household use provided that the storage is in free-standing containers within buildings or above ground with secondary containment adequate to contain a spill the size of the containers' total storage capacity.
 - 3. Commercial, industrial, institutional or multi-family uses which are allowed in the underlying district and which are not prohibited by Section 4.13.4.g.
 - 4. Enlargement or alteration of existing buildings and/or uses that do not conform to the Water

Supply and Wellhead Protection Zone II.

- f. Prohibited Uses, Zone I: The following uses with a high potential for groundwater contamination or reduction of natural recharge shall be prohibited within Zone I of the District:
 - 1. All uses not expressly permitted in Section 4.13.4.b or 4.13.4.d.
- g. Prohibited Uses, Zone II: The following uses with a high potential for groundwater contamination or reduction of natural recharge shall be prohibited within Zone II of the District:
 - 1. Mining of gravel, soil, loam, sand or other minerals, except for excavating or grading for buildings, foundations, roads, or utility works.
 - 2. Golf courses.

4.13.5 Special Permits

- a. Special Permit Granting Authority: For the purpose of this Section, the Planning Board shall be the Special Permit Granting Authority ("SPGA"). The SPGA shall follow procedural requirements contained in Section 9.2.3.c of this Zoning Bylaw in processing applications for Special Permits hereunder except that copies of such applications shall also be transmitted to the Board of Selectmen, Department of Public Works, and the Shirley Water District. Such Special Permit shall be granted only if the SPGA determines after review of all recommendations, that the intent of this Section, as well as its criteria are met. The SPGA shall not grant a Special Permit under this Section unless the petitioner's application materials include, in the SPGA's opinion, sufficiently detailed, definite, and credible information to support positive findings in relation to the standards given in this section.
- b. Special Permit Criteria
 - 1. Special Permits shall be granted only if the SPGA determines that the owner and/or the applicant have demonstrated through presentation of engineering and scientific data that the natural recharge of groundwater shall not be reduced on the premises and that the groundwater quality resulting from on-site operations, natural recharge, and background water quality will not fall below the standards established by the DEP in the Drinking Water Standards of Massachusetts 310 CMR 22.00, or if standards are not established water quality will not be degraded below background levels, at the property line.
 - 2. In reviewing applications for Special Permits and in imposing conditions thereon, the SPGA shall consider the effects of chemicals, pesticides, fuel, toxic materials, hazardous materials, on-site septic systems, stormwater run-off, and fertilizers used in conjunction with the proposed activity on the quality and quantity of surface and groundwater. The SPGA shall request recommendations in writing from the Conservation Commission, Board of Health, Department of Public Works and Shirley Water District in regard to all the above considerations.
 - 3. Pursuant to this Section, the SPGA may impose, on a case-by-case basis, specific design and/or performance standards necessary to ensure that the proposed use is in harmony with the stated purpose of this Section.
 - 4. Periodic monitoring may be required by the SPGA as a condition of the Special Permit. Such monitoring may include sampling of the groundwater disposed to on-site systems or drywells and sampling from groundwater monitoring wells to be located and constructed as specified in the Special Permit. Reports shall be submitted to the SPGA and to the Board of Health, and the costs shall be borne by the owner of the premises.
 - 5. In the Water Supply and Wellhead Protection District, the SPGA may, upon application, permit

any use or structure complying in all respects with the provisions of the underlying district(s) within which the land is located if the land is proven by the applicant not to be over an aquifer or primary recharge area, based on hydrological modeling and data supplied by a professional hydrogeologist or other qualified agent.

4.13.6 Boundaries of Zone I and Zone II Districts

a. **Zone I** consists of six (6) separate well protection areas defined as follows:

1. Catacunemaug Well: All land within 800 horizontal feet of the Catacunemaug Well.
2. Patterson Well: All land within 1,000 horizontal feet of the Patterson Well.
3. Walker Road Site: All land within 1,000 horizontal feet of the DEP-approved, pump-tested, Shirley Water District Well off Walker Road.
4. Cook Farm Site: All land within 1,000 horizontal feet of Shirley Water District Test Well #12 located at an elevation of 290 feet on the north side of a small hill approximately 750 feet down a cart road due south of Groton Road (Route. 225) 0.47 miles east of the junction of Groton Road and Route 2A (Great Road).
5. Squannacook Site: All land within 1,000 horizontal feet of the potential well site in the Massachusetts Division of Fisheries and Wildlife property marked with an iron pipe located at an elevation of 260 feet, approximately 0.26 miles north of Pumpkin Brook, at a point located at 71° 39' W, 42° 37' 28" N.
6. Bow Brook/Trophet Site: All land within 1,000 horizontal feet of the potential well site in the southwest corner of the Town marked with an iron pipe located at an elevation of 350 feet at the northwest corner of the ridge approximately 0.21 miles east of the Town's western boundary and approximately 0.26 miles north of the Town's southern boundary.

b. **Zone II** consists of aquifer and primary recharge areas to the Patterson and Catacunemaug Wells, and to the Cook Farm, Squannacook, Walker Road, Bow Brook/Trophet future well sites. With the exception of the Zone I sites within the area, Zone II includes all land within the following boundaries:

1. Patterson Well and Walker Road Well Site: Starting at the Town bound just above the Dam in the Nashua River for the towns of Ayer, Harvard and Shirley and going northwest over Walker Road and the railroad tracks to the High Tension Power Line Easement. Thence westerly following along the south side of the High Tension Power Line Easement to the east side of Clark Road. Thence up the east side of Clark Road to the 280 foot contour in a northerly direction over Patterson, Hazen and Horsepond Road to Route 2A. Thence east on Route 2A to Walker Road thence southeast to Devens bound on the east side of Hazen Road, which is approximately 600 feet northeast from the Walker Road intersection. Thence from the Devens bound on Hazen Road a distance back from the road on the east side and parallel to Hazen Road for 300 feet going southeast on Hazen Road to the Walker Road intersection. Thence a 300 foot distance back from and parallel to Walker Road going in a southerly direction to Walker Brook on the east side of Walker Road. Thence east along Walker Brook to the Nashua River then south up the Nashua River to point of origin to the bound just above the Dam.
2. Cook Farm Site: From the western Town line 500 feet north of the north side of Whitney Road, easterly 500 feet north of and parallel to the north side of Whitney Road to a point 2,250 feet due east of the western Town line. Thence north a distance of 2,250 feet from the western Town line and parallel to it, to and across Route 2A. Thence easterly along the north side of Route 2A to a point 3,750 feet east of the western town line, and thence north at a distance of 3,750 feet

east of the western Town line and parallel to it approximately 1,700 feet to the south side of a dirt road. Thence westerly along the south side of the dirt road approximately 750 feet to the 300 foot contour. Thence due north approximately 400 feet to the 350 foot contour. Thence west and north following the 350 foot contour round Deacon Hill and to the north side of Route 225 (Groton Road). Thence east along the north side of Route 225 to the west side of Townsend Road. Thence northerly 2,000 feet along the west side of Townsend Road, and from there, due west approximately 2,150 feet to the 350 foot contour. Thence following the 350 foot contour southwesterly to the Town line, and down the Town line to point of origin 500 feet north of Whitney Road.

3. Squannacook Site: From the north side of Trap Swamp Brook at the east side of Townsend Road, northerly up the east side of Townsend Road approximately 5,000 feet to a dirt road on the east side. Thence along the south side of the dirt road approximately 800 feet to the 300 foot contour, and along the 300 foot contour northerly to the Town line. Thence north on the Town line to the Squannacook River, and down the south bank of the river south easterly to the north side of Trap Swamp Brook. Thence westerly along the north bank of Trap Swamp Brook to point of origin at Townsend Road.
4. Bow Brook/Trophet Site: Starting at the southwest corner of the Town boundary with Lancaster/Lunenburg, east along the southern Town line to the west side of Lancaster Road. Thence north up the west side of Lancaster Road approximately 2500 feet to the south side of a gravel road on the west side of Lancaster Road opposite Deerbrook Park. Thence westerly along the gravel road to the east side of the High Tension Power Line Easement. Thence north along the east side of the High Tension Power Line Easement to the north side of Leominster Road. Thence west on Leominster Road to the intersection with Catacunemaug Road, thence west along Catacunemaug Road to the intersection with Mt. Henry Road. Thence up Mt. Henry Road to the railroad tracks. Thence west along the railroad tracks to the Town line. Thence south along the Town line to point of origin at Town of Shirley's southwest corner.
5. Catacunemaug Well: Starting at the railroad bridge south of the Catacunemaug Well and going southwest to the intersection of Catacunemaug and Mt. Henry Road. Thence following Mt. Henry Road west to the railroad tracks and west on the railroad tracks being the interpreted ground water divide north of Trophet the south side of Holden Road across the entrance to the Ronchetti Conservation Land due Swamp to the southernmost extension of Lake Shirley.
6. Thence following the eastern shore of Lake Shirley north to an interpreted groundwater divide at the north end of Long Swamp. Thence picking up the 350 foot contour and extending south along the aquifer just east of Long Swamp. The contour turns east then north and northwest near the entrance to Ronchetti Conservation Land on Holden Road. Thence from the 350 foot contour on north across Holden Road to the 350 foot contour on the south side of Chaplin Hill. Thence east on the 350 foot contour around Chaplin Hill north to 200 feet south of Whitney Road. Thence east 200 feet in on the south side of Whitney Road to the 350 foot contour. Thence south on said contour to the Valley Farm Road at 110 Center Road. Thence from the 350 foot contour going westerly down said road to the 320 foot contour. Thence south on said contour to an intermittent stream 100 feet off Center Road at the High Tension Power Line Easement. Thence south across the intermittent stream to the 320 foot contour at the base of Majors Hill. Thence west around Majors Hill to the High Tension Power Line Easement at the railroad tracks. Thence west to the railroad bridge point of beginning.

4.14 Intentionally left blank.

4.15 Wireless Telecommunications Towers and Facilities

4.15.1 Purpose

The purpose of this Bylaw is to establish general guidelines for the siting of wireless telecommunication towers for private or commercial use, antenna(s), satellite dishes greater than three (3) feet in diameter, and appurtenant structures. The intent of this Bylaw is to:

- a. require the location of the towers on land in areas where the adverse impact on the community is minimal,
- b. minimize the number and overall height of towers in Shirley,
- c. require the co-location of different telecommunication companies' antenna(s) on towers as much as possible,
- d. encourage the siting of towers and appurtenances to minimize their visibility to the public, including if possible location of antenna(s) in or on existing buildings,
- e. enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively and efficiently, and
- f. to encourage the co-location of municipal use on wireless telecommunication towers and facilities by local municipal agencies use upon request.

4.15.2 Definitions

- a. "Wireless Telecommunications Tower and Facilities" (hereinafter also referred to as the "facility or facilities") shall include towers, antenna(s), panels, and appurtenant structures designed to facilitate the following services: radio and television tower, cellular telephone service, personal communications services, and enhanced mobile radio service. For the purposes of this Bylaw, wireless telecommunication facilities shall also include any satellite dish greater than three (3) feet in diameter.
- b. References to "this Bylaw" herein shall be taken to mean the Protective Zoning Bylaw of the Town of Shirley, or more specifically, and as the context requires, Section 4.15 of same as defined herein.
- c. "Tower Height" shall mean the height of the tower or any component including antenna(s), as measured vertically from the extreme highest point of the tower to the lowest point of natural grade within a perimeter circle extending ten (10) feet outside the bounds of the smallest circle containing all the supporting legs of the tower.

4.15.3 General Requirements

- a. No wireless telecommunications facility, which shall include towers of any type greater than five (5) feet in height, satellite dishes over three (3) feet in diameter, antenna(s), panels, and appurtenant structures, shall be erected or installed except in compliance with the provisions of this Section. The foregoing provision shall also apply to antennas to be added to an existing tower, which specific antennas were not previously approved during a Special Permit process. In all cases, a Special Permit is required from the Shirley Planning Board in accordance with the requirements set forth herein. Granting of a Special Permit is required prior to the approval of a Site Plan by the Planning Board.
- b. Only free-standing towers not requiring guy wires for support are allowed.
- c. Tower height shall be limited to the minimum height necessary, as determined from objective

technical evidence presented by the applicant. The tower shall not exceed seventy-five (75) feet above the average grade of the existing terrain at the tower base, or its base structure, unless the applicant demonstrates to the satisfaction of the Planning Board that a taller tower will permit multiple users without impact on the viewshed, and that the applicant will be unable to provide service with a shorter tower. In all cases, tower height shall be limited to the Federal Aviation Administration height limit beyond which lighting would be required for the particular siting area proposed, or 125 feet whichever is less.

- d. Wireless telecommunications facilities shall be suitably screened from abutters and residential neighborhoods and located only in commercially zoned property. Towers may be allowed on a lot as an accessory use to a main building, however no more than one (1) tower may be sited on any parcel of land.
- e. There shall be a presumption by the Special Permit Granting Authority (SPGA) that the applicant's service can be provided by location of antenna(s) in or on existing buildings or structures. This presumption may be rebutted by hard evidence to the contrary that such location is not feasible.
- f. When utilizing existing buildings or structures for antenna(s) location, antenna(s) shall, be enclosed within an existing structure such as a church steeple or clock tower. Antenna(s) may only be placed on the exterior of existing buildings or structures upon the determination by the SPGA that placement within existing buildings or structures is not feasible, and that the placement of such antenna(s) does not materially detract from the historic value or traditional view of buildings or structures in the vicinity. The height limit imposed by Section 4.15.3.c above shall also apply to antenna(s) placed on existing buildings and structures, and shall be measured from the lowest ground elevation adjacent to the existing building or structure.
- g. There shall be a presumption by the SPGA that co-location of multiple service providers now seeking, or anticipated to be seeking a tower location within the next three (3) years and within a two (2) mile radius of the proposed site, is possible, however each shall require a separate Special Permit. This presumption may be rebutted by substantial evidence to the contrary that such co-location is not feasible.
- h. Facilities shall be removed upon cessation of use, at the sole expense of the owner(s) of the facility defined in Section 4.15.6.a below. Use of the facility shall be determined to have ceased when it has not been in use for a period of twelve (12) continuous months, or for a total of eighteen (18) out of the last thirty (30) months. Records shall be submitted to the SPGA annually indicating the usage of the facility over the previous twelve (12) months, and its current operational status. Such information shall be a condition of the Special Permit.
- i. All wireless telecommunications facilities shall comply with all applicable standards and regulations of the Federal Communications Commission (FCC), Federal Aviation Administration (FAA), the American National Standards Institute, the Massachusetts Aeronautics Commission, and the Massachusetts Department of Public Health. The SPGA may require annual certification demonstrating continuing compliance with regulations and requirements of any or all of the above regulatory agencies as a condition of the Special Permit.
- j. If the SPGA determines that independent review of the Special Permit is required, it may require the applicant to pay a review fee consisting of reasonable costs to be incurred by the SPGA for the employment of outside consultants pursuant to rules adopted by the SPGA as authorized by M.G.L. Chapter 44, Section 530.

4.15.4 Special Permit

- a. The Shirley Planning Board is hereby designated the Special Permit Granting Authority (SPGA) to grant Special Permits for wireless telecommunications facilities. Special Permits shall be

administered according to Section 10.3 "Issuance of Special Permits" of the Shirley Protective Zoning Bylaw.

b. Expiration/Renewal

1. A Special Permit granted under this Bylaw shall expire within two (2) years of the date of issuance of the permit. Prior to the expiration of the Special Permit, the applicant shall make application to the SPGA for renewal of the Special Permit for an additional two (2) year period. Said renewal shall not require the technical submissions of the original application, provided that conditions of the site and facility have not changed materially from the original application. A certification by a Structural Engineer licensed in the Commonwealth of Massachusetts as to the condition and structural integrity of the tower and its antennas shall accompany every application for renewal.
2. Any transfer of licenses or equipment, shall require the new owner to re-apply for a Special Permit under the requirements of this Bylaw. Special Permits shall not be transferable under this Bylaw.

c. Application

All applications for a Special Permit for a wireless telecommunications facility shall be submitted on forms provided by the SPGA and shall include at a minimum the following supporting information:

1. A locus plan at a scale of 1 inch=1000 feet which shall show all property lines, the exact location of the proposed structure(s), streets, topography in a general manner including significant landscape features, residential dwellings and neighborhoods within 1000 feet of the site, all buildings within 500 feet of the proposed facility, and all other wireless telecommunications towers within two (2) miles of the proposed site.
2. A color photograph of the proposed site from the five (5) clearest vantage points with a scale rendition of the appropriate view of the proposed tower superimposed over the photographs.
3. **Ten (10)** copies of a plan conforming to requirements for a Site Plan set out in Section 7 of the Protective Zoning Bylaw and in the Site Plan Review Regulations adopted by the Shirley Planning Board.
4. Documentation consisting of a Technical Report prepared by a Professional Engineer registered in the Commonwealth of Massachusetts containing supporting calculations and technical details and criteria in support of the application and including at a minimum:
 - a. Certification that the tower, antenna(s) and appurtenant structures comply with all standards of the Federal and State regulatory agencies cited in Section 4.15.3.i of this Bylaw.
 - b. A listing of the pertinent specifications of the proposed facility relating to the square footage and plan view dimensions of the tower base and any appurtenant structures, heights of the tower and of appurtenant structures, depth of footings, height and construction of fencing, and detailed diagrams of the size, type and configuration of antenna(s) arrays proposed now, and anticipated in the future.
 - c. An analysis of the capacity of the proposed tower to accommodate multiple antenna(s) arrays from different wireless telecommunication companies, including type(s) of technology planned for and types and number of antenna(s) and/or transmitters/receivers. Also a timetable for expected occupation of each of the available slots on the tower, to include expected type of technology and antenna(s).

- d. An analysis justifying the location, height and design of the facility with respect to technical, economic and competitive factors, as balanced against the expected neighborhood and environmental impacts.
 - e. An analysis of the coverage area of the proposed tower showing neighboring streets and intensity of signal reception along each of the main streets within two (2) miles of the proposed facility. For comparison, a similar analysis of any alternative sites available or potentially available, or being considered for tower siting which could potentially serve substantially the same or a similar area.
- 5. A Marketing Report conducted by a recognized authority in the field of telecommunications services describing current demand for space on tower facilities and project demand for such space within the Town of Shirley for the next ten (10) years. Said report shall include data, calculations and projections in support of the project's conclusions.
- 6. Written evidence of ownership or of long term control (e.g. a long term lease) of the property upon which the tower is to be erected. Long term as used herein shall mean a period of time equivalent to at least three (3) terms of the Special Permit.
- d. The SPGA may require the applicant to perform an on-site demonstration of the visibility of the proposed tower by means of colored four (4) foot minimum diameter weather balloon held in place at the proposed site and maximum height of the tower. This demonstration shall take place after the application for Special Permit has been made, but prior to the close of the public hearing on said Special Permit. The applicant shall take care to advertise the date of the demonstration in a newspaper widely circulated in the neighborhood of the proposed site and notice of said public hearing shall be mailed to direct abutters and all abutters within a three hundred (300) foot radius of the proposed tower location. Failure, in the opinion of the SPGA, to adequately advertise and notify abutters of this demonstration may be cause for the SPGA to require another, properly advertised demonstration.
- e. Approval Criteria

The SPGA shall grant the Special permit only upon finding that the wireless telecommunications facility proposed:

- 1. Has been adequately described and justified to the SPGA by the applicant's compliance with the requirements of Sections 4.15.4.a and 4.15.4.d, above.
- 2. Will not be detrimental or injurious, in the opinion of the SPGA to the neighborhood in which it is to be located.
- 3. Is sited and designed to have the minimum visual, economic and aesthetic impact possible on abutters. When considering an application for such a facility, the SPGA shall place great emphasis on the proximity of the facility to residential dwellings and its impact on these residences.
- 4. Is designed to be the minimum height necessary for the wireless telecommunications service required.
- 5. Is designed to accommodate the facilities of wireless telecommunications companies operating in the area to the maximum extent possible, and shall incorporate a tower capable of

accommodating a minimum of three (3) separate antenna arrays (although appurtenant buildings may be constructed for only those users identified in the application for Special Permit); this requirement may be waived by the SPGA only upon a finding that for the particular site in question, said requirement is contrary to the public interest.

6. Due to technical requirements, topography or other unique constraints, the facility cannot be located at any other available site that would be less visible to the general public.
7. Has been demonstrated by technical data to be necessary due to the inability of existing facilities in the same or similar service area to accommodate the further antenna arrays required at the time of the application.
8. That it has been demonstrated by technical evidence that, if so requested by the Town, and not offered, co-location of lease space on the tower for the Town's emergency services personnel (Fire, Police and Ambulance) is not feasible.

4.15.5 Design Requirements

- a. All towers shall be designed to have sufficient structural capacity to support antenna arrays for a minimum of two (2) separate wireless telecommunications companies. It shall be a condition of the Special Permit that all towers and facilities applications allow consideration for an option to lease tower space by the Town's emergency services personnel (Fire, Police, and Ambulance) to be discussed within the public hearing process.
- b. Any tower shall be set back from any lot line by a minimum distance equal to the height of the tower above the lowest surrounding grade, but in no case less than the minimum required setbacks for the district in which it is situated. Appurtenant structures shall also conform to the minimum required setbacks for the district in which the facility is located.
- c. Notwithstanding the provisions of Section 4.15.5.b, facilities shall be sited such that, at a minimum, a fifty (50) foot naturally vegetated buffer zone is provided between the nearest edge of the fencing surrounding the facility and any abutting property line.
- d. Lighting at all wireless telecommunications facilities shall be limited to low-intensity lighting intended for security purposes and installed at or near ground level. The source for such lighting shall not be directly visible from any residential property in the area of the site.
- e. Fencing shall be provided to control unauthorized access to the tower. Such fencing shall not be of the barbed wire or razor wire type, but shall be a minimum of eight (8) feet in height with an added section of anti-climber returning to the exterior. Said fencing shall be appropriately screened and colored to blend in with the surrounding landscape.
- f. Towers shall be colored so as to blend in with surrounding landscape, including the possibility of different colors to cause the structure(s) to blend with the landscape below the tree-line horizon, and the sky above the tree-line horizon. The SPGA may impose reasonable conditions to ensure the facility will have the minimal impact on the surrounding neighborhood, visually and from noise generated by it. Conditions may include grading, screening by plantings and otherwise, and painting, as well as increased setbacks if noise from the facility is a concern, and in the sole opinion of the SPGA, is not adequately addressed by the applicant.

- g. Access to the tower site shall be provided by a driveway designed to cause only minimal disturbance to the natural terrain, and provide emergency access at all times, the adequacy of which shall be determined by emergency services personnel and the SPGA. Wherever beneficial in the opinion of the SPGA, said access driveway shall be laid out so as to have sufficient turns to prevent passers-by from having direct line-of-site visibility to the facility.
- h. There shall be no signs, except for no trespassing signs discreetly placed, and a required sign giving a phone number where the owner or legal operator of the facility can be reached on a 24-hour basis. All signs shall conform with the sign requirements of the Shirley Protective Zoning Bylaws, and shall be the minimum size necessary in the opinion of the SPGA to accomplish the purpose of the sign.
- i. The height of satellite dishes (greater than three (3) feet in diameter as regulated under this Bylaw) located on property abutting property(s) upon which residential structures are sited, shall not exceed the height of the tree-line on the lot or an adjacent tree-line area, whichever is more conducive, and shall not be visible from any street.
- j. There shall be one parking space only for each tower site to be used solely in connection with maintenance of the facility, and not to be used for the permanent storage of vehicles or other equipment.
- k. There shall be only one building allowed to be constructed at the base of the tower, and it shall be for the purpose of housing the necessary support equipment for the tower transmission and receiving antenna(s). Said building shall be no higher than twelve (12) feet above the surrounding grade to its highest point, shall have a peaked roof (minimum six (6) Vertical: twelve (12) Horizontal pitch) and architectural features consistent with the zoning district and with surrounding existing buildings, shall have a maximum footprint of 400 square feet, and shall be screened from abutting properties as much as is feasible in the opinion of the SPGA. Multiple story buildings are permitted only if additional stories are below grade.
- l. All network interconnections and other support equipment required to be sheltered shall be contained within the single support building allowed at the base of the tower. Other equipment shall be shown on the site plan, and may be subject to conditions or being placed within the support building. This determination shall be made by the SPGA based upon individual site conditions and the ability of the exterior equipment to be screened from abutting properties. The intent is to minimize visible clutter at the base of the tower to the maximum extent possible.
- m. All electrical, telephone, and other utility wires servicing the facility, tower, dish or support structures for the said facility, shall be placed below ground, unless the SPGA determines that such placement is not feasible or is not in the best interest of the Town of Shirley. The construction standards for electrical service lines and appurtenances shall be designed according to specifications of Massachusetts Electric and Verizon Communications or applicable local telephone service carrier.

4.15.6 Performance Guarantees

- a. It shall be the joint and several responsibility of the Special Permit applicant and any subsequent owners of the facility to completely remove the tower, antenna(s), satellite dish(es), panels, and all appurtenant structures upon cessation of use of the facility, and to restore the site to its pre-construction condition. An initial cash bond shall be posted in a passbook account in a reasonable amount set and approved by the SPGA to assure timely and complete removal of all above ground structures associated with the facility when the use of the facility is discontinued. The tower and

appurtenances shall be removed within ninety (90) days of written request from the SPGA to the current facility owner, beyond which time the SPGA may utilize the posted bond to effect the removal of all above ground structures associated with the facility, and the restoration of the site to its original grades with a permanently stable landscaped surface.

- b. The applicant shall submit a bid for the removal of the facility from three (3) qualified contractors at the time of initial Special Permit Application. The SPGA may use these bids at its discretion to set the removal bond amount.
- c. It shall be the responsibility of the current owner of the facility to maintain the entire facility and its access road and screening in a condition equivalent to that when construction was initially completed to the satisfaction of the SPGA. Therefore, a maintenance agreement between the applicant, or a designated operator, and the SPGA, shall be executed which defines the terms of and responsibility for the maintenance as required by the SPGA. Said agreement shall constitute a condition of the Special Permit. An additional bond shall be posted, in the form of a separate passbook account in an amount to be set and approved by the SPGA, to be utilized for maintenance of the facility and its access road and screening in the event the maintenance agreement to be executed between the SPGA and the applicant is not complied with to the on-going satisfaction of the SPGA.

4.15.7 Site Plan Approval

- a. Site Plan Approval by the Planning Board is required for the siting and construction of all wireless telecommunication facilities as defined above in Section 4.15.2 of this Bylaw. If modification of a previously issued Special Permit is sought, the Planning Board may require approval of a new site plan.
- b. Site Plan review by the Planning Board may be conducted concurrently with the proceedings and public hearings of the Special Permit application as defined in Section 4.15.4 of this Bylaw.
- c. Site Plan applications shall be made in conformance with the Site Plan Section (Section 7) of this Protective Zoning Bylaw, and in conformance with the Site Plan Review Regulations adopted by the Shirley Planning Board.

5. PARKING AND LOADING

5.1 General

Parking and loading shall be provided in accordance with this Section for any building or use hereafter erected, enlarged or increased. Parking and loading space shall be maintained and shall not be encroached upon so long as said principal building or use remains, unless an equivalent number of such spaces is provided elsewhere in conformance with this Bylaw.

5.2 Obligation

The requirement for parking space and loading space shall be a continuing obligation of the owner of the real estate on which any such structure or use is located as long as the structure or use is in existence and its use requiring vehicle parking facilities continues unless a change in use also changes the parking requirements. It shall be unlawful for an owner of any structure or use affected by this Section to discontinue, change or dispense with, or to cause the discontinuance of any vehicle parking or loading space. It shall be unlawful for any firm, corporation or person to occupy a structure without providing parking and loading spaces which meet with the requirements of and are in compliance with this Bylaw.

5.3 Collective Parking

Nothing in this Section shall be construed to prevent collective provision of off-street parking facilities for two (2) or more structures or uses, provided that the total of such off-street parking spaces supplied collectively shall be not less than the sum of the requirements for the various uses computed separately.

5.4 Location of Parking

The parking spaces required for all residential dwellings shall be located on the same lot as the dwelling and the parking spaces required for other uses shall be located on the same lot as the principal use or on a lot which is within 1,000 ft. of the principal use, such distance to be measured along street lines to the property.

In industrial zones, if there are special and unusual circumstances that make it impractical to provide all required parking within 1,000 ft. of the principal use, other provisions may be made for the location of parking provided it is a permitted use in the zone in which it is to be located and subject to Special Permit and Site Plan approval by the Planning Board.

When required parking spaces are provided on land other than the lot occupied by the principal use for which they are required, the land occupied by such spaces must be in the same possession as such principal use. The owner of such land must be bound by a covenant, recorded in the office of the Town Clerk binding such owner and his heirs and assigns to maintain the required number of parking spaces for the duration of the use served, unless the Town provides public parking for that particular business.

5.5 Size and Number of Spaces

An off-street parking space as used herein shall be a space 9 ft. in width and 20 ft. in length. However, a parking space not less than 8 ft. by 18 ft. may be permitted in cases where the parking spaces are for the exclusive use of employees or the parking spaces are within a garage.

Off-street parking spaces shall be provided for all new uses or buildings hereafter constructed, reconstructed, or enlarged in accordance with the following schedule of requirements, unless otherwise provided for by the Town.

<u>Use</u>	<u>Spaces Required</u>
a. Dwellings	1-1/2 spaces per dwelling unit
b. Housing for elderly	0.75 space per dwelling unit
c. Places of assembly including but not limited to churches, auditoriums, theaters, and stadiums	1 space for each three (3) persons, capacity based on State Building Code
d. Food and beverage establishments, clubs (public and private), fraternal organizations and lodges	1 space for each seventy-five (75) sq. ft. of gross floor area but not less than three (3) spaces per separate enterprise
e. Hotels, motels, and boarding, lodging, and rooming houses	1 space for each rooming unit, plus required parking for facilities used for eating, drinking, assembly, and other such uses
f. Automotive services including but not limited to gas stations, auto dealers, auto accessories, auto repair, overhaul shops, and car wash	1 space for each 500 sq. ft. of gross floor area; or three (3) spaces per bay, lift, or equivalent whichever is greater. An attendant operated or self-service car wash shall have at least five (5) waiting positions for each bay between the street line and such bay for cars approaching and at least two (2) waiting position for cars leaving said bays
g. Open or outdoor businesses including but not limited to those which sell new and used: motor vehicles, trailers, mobile homes, building supplies, machinery, equipment, swimming pools, nursery and garden supplies	Adequate on-site customer parking which does not impede vehicular circulation or create other hazards or nuisances
h. Appliance, carpet, furniture, electrical, heating, and plumbing retail sales	1 space for each 600 sq. ft. of gross floor area but not less than five (5) spaces per separate enterprise
i. Other retail sales and service establishments	1 space for each 100 sq. ft. of net floor area but not less than five (5) spaces per separate enterprise*
j. General business and professional offices and financial institutions	1 space for each 500 sq. ft. of net floor area; or two (2) spaces for each office or tenant, whichever is greater but not less than five (5) spaces per separate enterprise* A drive-in bank window shall have at least five (5) waiting positions between the street line and said window for cars approaching and at least one waiting position for cars leaving said window

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|----|--------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| k. | General hospital, convalescent, nursing or rest home | 1 space per two (2) patient beds |
| | | |
| l. | Manufacturing and industrial establishments | 1 space for each 500 sq.ft. of gross floor area |
| | | |
| m. | Wholesale and distribution businesses, warehousing and storage businesses, truck terminals, and other enclosed non-industrial storage uses | 1 space for each 1,000 sq. ft. of gross floor area or one space for each one and one half (1 1/2) employees on the maximum work shift, whichever is less |

*This section shall not apply in District C-1 if adequate municipal parking is provided by the Town.

5.6 Number of Loading Spaces

Every hospital, institution, hotel, retail store, office building, wholesale house, warehouse, or industrial building, or additions thereto to which or from which outside deliveries of materials or dispatches of materials are to be made by motor transport and totalling 8,000 sq. ft. or more in floor area hereafter constructed, reconstructed, or enlarged shall have on the lot one permanently maintained loading space and one additional loading space for each additional 16,000 sq. ft. of floor area or major portion thereof, excluding basements.

5.7 Design Requirements

The general layout and traffic circulation of parking and loading areas shall be designed so as to avoid unsafe conditions and traffic congestion in the streets upon which the area has access and to provide for the safety and adequacy of access for vehicles and pedestrians using the area.

- 5.7.1 Parking spaces and aisles shall be laid out in accordance with the "Design Standards for Off-Street Parking", as set forth hereinafter. All proposed curb cuts, access drives, and parking areas shall comply with all applicable requirements of the Massachusetts Department of Public Works.
- 5.7.2 Any enclosed loading space shall be located at least 30 ft. from any street line and any open loading space shall be so designed that trucks when loading or unloading will not project over any street line.
- 5.7.3 Individual parking and loading spaces, maneuvering areas, entrances and exits shall be suitably identified with lines and arrows, as deemed necessary by the Building Inspector.
- 5.7.4 No access drive, aisle or maneuvering area shall have a turning radius of less than twenty (20) ft.
- 5.7.5 Where vehicles will be located adjacent to the sidewalks, fences, walls, required buffer strips, trees, landscaping, or similar constructions, a suitable bumper or curb shall be provided in such a location that the vehicle cannot overhang or otherwise damage said obstruction.
- 5.7.6 Off-street parking and loading areas shall be surfaced with an asphaltic, bituminous, cement, or other properly bound pavement so as to provide a durable and dustless surface, and shall be so graded and drained as to dispose of all surface water accumulation within the area. The use of so called porous paving is encouraged. The surface shall be delineated so that the parking space is apparent.
- 5.7.7 Any lighting used to illuminate any off-street parking or loading area shall be shielded and so arranged as to reflect the light away from adjoining premises and public rights-of-way.

- 5.7.8 Any portion of a parking area not used for parking space or circulation shall be appropriately landscaped and protected.
- 5.7.9 All parking areas with more than five (5) spaces and all loading areas shall be bordered on all sides that are contiguous to or across the street from the boundary of any property within any Residence Zone within a ten (10) ft. wide buffer strip on which shall be located and maintained appropriate fencing and/or landscaping of suitable type, density and height to effectively screen the parking area and the lights of motor vehicles from adjoining residential areas.
- 5.7.10 Access drives shall be arranged for the free flow of vehicles at all times; and all maneuvering spaces and aisles shall be so designed that all vehicles must exit from and enter into a public street by being driven in a forward direction.
- 5.7.11 All portions of all parking spaces and maneuvering aisles shall be set back a minimum of five (5) ft. from any wall of a building.
- 5.7.12 Each required off-street parking space shall be designed so that any motor vehicle may proceed to and from said space without requiring the moving of any other vehicle or by passing over any other parking space, except where the parking area is attended or limited to employees.

5.8 Access Drives

No driveway or access road, to or from any property, shall be so located at its juncture with a street as to create a danger or menace to the community or to the convenience or proper use of the adjoining property. No driveway shall provide access to a lot located in another Zoning district, if said lot is used for any use, principal or accessory, not permitted in the district in which such driveway is located. The driveway or access road to a lot shall be through its frontage.

- a. No driveway shall be located closer than twenty-five (25) ft. to any street intersection measured along the street lines. In any non-residential district, no two driveways on the same lot shall be located closer than twenty-five (25) ft. to each other at their closest limits.
- b. No lot having less than 200 ft. of street frontage shall have more than two (2) driveway entrances and/or exits on each street abutting the lot. Lots with more than 200 ft. of street frontages may have up to one driveway entrance and/or exit for each 100 ft. of additional street frontage.

5.9 Parking Restrictions

Nothing herein shall be construed to prohibit the owner of a parking or storage area from restricting the use thereof to his customers, employees, or other invitees, nor from charging a reasonable fee for the use thereof.

DESIGN STANDARDS FOR OFF-STREET PARKING:

(diagram to come)

6. SIGNS

6.1 General Requirements

It is the intention of these sign regulations to promote the public safety, protect property values, create an attractive business climate and enhance the physical appearance of the community.

6.1.1 Maintenance

All signs together with their supports, braces, guys, and anchors shall be kept in good repair and in safe condition. The owner of the premises on which a sign is erected shall be directly responsible for keeping such sign and premises around it in safe, sanitary, neat, and clean condition.

6.1.2 Illumination

Any illumination sign or lighting device shall employ only lights emitting a light of constant intensity and shall be designed, located, erected, and maintained only for the purposes of illuminating the subject sign and/or premises.

6.2 Signs Permitted in All Zones

6.2.1 The following signs are permitted in all zones provided they meet the General Requirements of Section 6.1:

- a. One non-illuminated identification sign not to exceed three (3) sq. ft. area nor eight (8) ft. in height, stating the name and address of the occupant;
- b. One temporary non-illuminated real estate sign pertaining to the lease, sale, or use of a lot or building on which such sign is placed, not exceeding a total area of six (6) sq. ft.;
- c. One sign for identification of professional and home occupations, or of the occupant, not exceeding a total area of three (3) sq. ft.;
- d. A marker not to exceed two (2) sq. ft. identifying a historic building;
- e. A sign erected by the Town, State, or Federal Government;
- f. A sign erected by a public carrier for direct information concerning its service at the location;
- g. Signs and displays associated with an approved stand for the retail sale of agricultural or farm produce not exceeding twelve (12) sq. ft. in total area;
- h. A sign erected by any fraternal, civic, religious, or service organization or club, merely announcing its presence in the Town of Shirley and the time and place of its regular meeting, provided such sign shall not exceed three (3) ft. in diameter or nine (9) sq. ft. in area;
- i. Any flag, badge, insignia, or device of any governmental agency or civic, charitable, religious, patriotic, political, fraternal, or similar non-profit organization when displayed along a line of march of any parade, or in sockets along any street during a fund raising drive;
- j. Temporary political signs displayed during election campaigns provided no sign shall exceed four (4) sq. ft. in a residence zone or twenty-four (24) sq. ft. in a business or industrial zone.

- 6.2.2 A temporary construction sign is permitted in any zone provided the sign is non-illuminated, does not exceed thirty-two (32) sq. ft. in area, identifies an engineer, architect, and/or contractor engaged in the development of land or construction or alteration of buildings, and further provided such sign is set back at least ten (10) ft. from any street line and is removed upon completion of construction.

6.3 Signs Permitted in Residence Zones

The following signs are permitted in all residence zones.

- 6.3.1 One non-illuminated or indirectly illuminated identification sign for each separate street line of an approved Special Permit Use not to exceed nine (9) sq. ft. in area nor eight (8) ft. in height; and further limited as follows: said sign shall be subject to the applicable side and rear yard requirements for principal buildings and a minimum of fifty percent (50%) of the applicable front yard requirement for principal buildings; the height of such sign shall not be greater than the distance it is located from any lot line; the sq. ft. area of such shall not be greater than one-half (1/2) of the linear foot distance it is located from any lot line.
- 6.3.2 Other signs shall be limited to directional signs necessary for public safety or convenience and shall be designed and approved as integral part of the Site Plan for an allowable Special Permit Use.

6.4 Signs Permitted in Non-Residential Zones

The following signs are permitted in the Non-Residential Zones provided they meet the general requirements of Section 6.1:

- 6.4.1 Advertising goods and services available on the premises, not exceeding one sq. ft. for every linear ft. of store frontage and in no case exceeding a total area of thirty-six (36) sq. ft. per lot;
- 6.4.2 For identification of the business, company, or agency on a wall or parapet of a main building not exceeding thirty (30) sq. ft. for each separate business in a Business District and not exceeding 200 sq. ft. in a Manufacturing District;
- 6.4.3 For the purposes of identifying the business or manufacturing development or shopping center, one free-standing sign with a total of thirty-six (36) sq. ft. of area for each street on which the business or manufacturing development or shopping center fronts.
- 6.4.4 A sign attached to a building shall not:
- a. Project more than one ft. from the building wall when the building bounds on a lot line;
 - b. Project into or over the paved portion of a street or a right-of-way;
 - c. Exceed the height of the building.

6.5 Prohibited Signs

- 6.5.1 The prohibitions contained in this Section shall apply to all signs, all artificial lighting and all zones, regardless of designation.
- a. No permitted sign, including projecting signs, shall be located in any street right-of-way;
 - b. No sign or advertising device shall be erected, used or maintained which in any way simulates official directional or warning signs erected or maintained by the Federal, State, or Town governments for the protection of the public health and safety;

- c. No sign or advertising device shall be erected or maintained in such a manner as to obstruct or interfere with the free and clear vision on any street or driveway;
- d. No sign or advertising device shall be erected or maintained with any lighting or control mechanism which may cause radio or television interference;
- e. No illuminated sign or lighting device shall be placed or directed on any property in a manner that would permit the light beams and illumination therefrom to be directed or beamed onto a public street or walkway, or onto adjoining properties so as to cause glare or reflection that might constitute a traffic hazard or public nuisance;
- f. No animated sign or advertising device shall be erected;
- g. No flashing sign or advertising device which creates intermittent or varying light intensity shall be erected;
- h. No projecting sign shall extend more than twelve (12) in.beyond the building walls or parts thereof, except as otherwise provided in these sign regulations;
- i. No roof sign shall be erected;
- j. No building or part thereof, such as a gable, roof, or wall, shall be outlined by direct illumination for the purpose of commercial advertising;
- k. No sign shall be attached to or be erected or maintained in such a manner as to obstruct any fire escape, window, door, or other building opening used for egress and ingress, ventilation or other fire fighting purpose;
- l. No commercial advertising sign shall be allowed, except as otherwise provided in Section 6.4 hereof.

7. SITE PLAN REVIEW AND APPROVAL

7.1 Applicability

No permit to build or alter or expand any industrial or commercial building or structure located in any district where such construction shall exceed a total gross floor area of 600 sq. ft. shall be issued by the Building Inspector, until he shall have received from the Planning Board a written statement of final approval of the Board in accordance with the provisions of this Section. The Building Inspector shall enforce the fulfillment of any conditions or revisions which the Planning Board may impose. This Section shall not include sign or normal maintenance.

7.2 Board of Appeals Referrals

When in accordance with the provisions of this Bylaw the Board of Appeals refers an application for a Special Permit to the Planning Board for review and comment, the Planning Board's written report to the Board of Appeals shall include, but not be limited to, all of the findings and determinations the Planning Board would make in conducting a Site Plan review under this section.

7.3 Findings and Determinations

The Planning Board shall review preliminary site plans and shall issue site plan approval (including appropriate revisions and conditions) if the Planning Board makes the following findings and determinations:

- a. That the proposed development will be harmonious with and not harmful, injurious, or objectionable to existing or future uses in the area and will be consistent with the goals of the Shirley Master Plan;
- b. That natural resources will be preserved to the maximum extent feasible;
- c. That erosion will be controlled during and after construction and will not adversely affect adjacent or neighboring property or public facilities or services;
- d. That increased runoff due to development on the site will not be injurious to any downstream property owners or cause hazardous conditions on adjoining streets;
- e. That adequate parking has been provided and suitably located to ensure compliance with this Bylaw;
- f. That the proposed development will not result in pollution of ground or surface waters;
- g. That the movement of vehicular and pedestrian traffic within the site and in relation to access streets will be safe and convenient;
- h. That appropriate vistas and environmental qualities of the Town will be protected;
- i. That the applicant has demonstrated through presentation of engineering data that natural recharge of the groundwater will not be reduced on the premises; and that the groundwater quality resulting from stormwater run-off, recharge, background water quality, on-site septic systems, and other on-site operations including use of pesticides, fuel, toxic materials, hazardous materials, and fertilizers in conjunction with the proposed development, will not fall below the standards established by the Massachusetts Department of Environmental Quality Engineering (DEQE) in Drinking Water Standards in Massachusetts.

7.4 Site Plan Filing

A person applying for Site Plan Review shall file with the Planning Board **fifteen (15)** copies each with a copy filed forthwith with the Town Clerk of an application and a preliminary site plan, and a filing fee as required by the Planning Board. Such application and site plan shall include the elements on which the Planning Board is to make a

finding and determination, as provided in this Section, and shall also include information as to the nature and extent of the proposed use of buildings, and such further information as the Planning Board shall reasonably require by rule or regulation. In subsequent applications concerning the same subject matter, the Board may waive the filing of plans and documents to the extent they duplicate those previously filed.

7.5 Referrals to Town Boards/Commissions

The Planning Board shall within one week of receipt of site plan application transmit to the Conservation Commission and such other Town committees, commissions, and boards it shall reasonably designate by rule or regulation, a copy of the application and site plan. The Conservation Commission and other agencies designated by the Planning Board shall consider the same and submit a final report thereon with recommendations to the Planning Board. The Conservation Commission shall review the application with particular reference to the provisions of the Wetlands Protection Act and shall recommend as to the advisability of granting the site plan approval and as to any restrictions which should be imposed upon the development as a condition of such permit. The Planning Board shall not make a finding and determination upon an application until it has received the final report of the Conservation Commission and/or other agencies designated by the Planning Board thereon, or until thirty-five (35) days shall have elapsed since the transmittal of said copies of the application and site plan to the Conservation Commission and other agencies designated by the Planning Board without such report being submitted.

7.6 Public Hearing and Final Action

The Planning Board shall hold a public hearing within sixty-five (65) days after the filing of an application and site plan and, except as hereinafter provided, shall take final action within ninety (90) days after the date of the public hearing. Such final action shall consist of either:

- a. A finding and determination that the proposed construction, reconstruction, substantial exterior alteration, or addition will constitute a suitable development and will not result in substantial detriment to the neighborhood, or the natural, scenic or aesthetic qualities of the Town, or
- b. A written denial of the application for such finding and determination, stating the reasons for such denial, which reasons shall include a statement of the respect in which any elements in and particular features of the proposal are deemed by the Board to be unsuitable or detrimental to the neighborhood or the natural, scenic, or aesthetic qualities of the Town.
- c. A finding and determination may be made subject to such reasonable conditions, modifications and restrictions set forth therein as the Board may deem necessary to ensure that the proposed construction, reconstruction, substantial exterior alteration, or addition will constitute a suitable development and will not result in substantial detriment to the neighborhood or the natural, scenic, or aesthetic qualities of the Town.
- d. In the event that the Planning Board approves a site plan under these provisions, any construction, reconstruction, substantial exterior alteration, or addition shall be carried on only in conformity with any conditions, modifications, and restrictions subject to which the Board shall have made its findings and determination, and only in conformity with the application and site plan on the basis of which the findings and determination are made.

Draft work in progress - Official revised printing to be after close of Fall 2004 STM

- e. Minor changes to the approved site plan may be submitted to the Building Inspector for approval and if deemed insignificant or minor in nature or effect, may be approved by him. Any changes designated to be significant or major by the Building Inspector or the Planning Board shall be resubmitted to the Planning Board in the form of a new site plan. Any building, reconstruction, or expansion not approved by the Building Inspector or the Planning Board shall be ordered halted and fully removed.
- f. The approval of a site plan, or a modification or amendment thereof, shall remain effective for a period of one year only from the date of such approval (either directly or by inaction) unless prior to the expiration of such one year period, the applicant makes substantial efforts to build in accordance with the approved site plan, or unless the Planning Board votes to extend the time for a period not to exceed one additional year.

7.7 Design Criteria – wording to come??

8. ADMINISTRATION

8.1 Administration

The provisions of this Bylaw shall be administered and enforced by the Building Inspector, in accordance with the provisions of Ch. 40 A, MGL. On any question of interpretation, the Building Inspector shall consult with the Planning Board.

8.2 Building Permits

8.2.1 Application

Any application for a Building Permit for a new or altered use of land or structure of for the construction, reconstruction, alteration, or relocation of a building shall be accompanied by plans and specifications with a specific reference to the subject lot as recorded in the Registry of Deeds and showing the actual shape and dimensions of the lot to be built upon or to be assigned to the proposed use, the names of all present owners of record, the exact location of all buildings or structures already on the lot, all abutting streets, the lines within which all buildings or structures are to be erected, and such other information as may be necessary to provide for the administration of this Bylaw.

8.2.2 Application Approval

The Building Inspector shall examine such application and, if it conforms in all respects with the requirements of the Building Code and this Zoning Bylaw or with a decision rendered by the Board of Appeals or special permit review agency, shall issue a building permit.

8.2.3 Time Limit on Permit

Construction or operations under a Building or Special Permit shall conform to any subsequent amendment of this Bylaw unless the use or construction authorized by this permit is commenced within a period of six (6) months after the issuance of the permit and in cases involving construction, unless such construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

8.2.4 Application Files

A record of all such applications, plans, Building Permits and Certificates of Occupancy shall be kept on file by the Building Inspector, together with a record of non conforming uses and buildings or structures.

8.3 Certificate of Occupancy

No Certificate of Occupancy shall be signed by the Building Inspector until the premises, building or structure, and its uses and accessory uses, comply in all respects with this Bylaw.

8.4 Violation and Penalty

Whoever violates any provisions of this Bylaw shall be punished by a fine not exceeding \$100 for each offense. Each day or portion thereof that such violation continues shall constitute a separate offense.

9. BOARD OF APPEALS

9.1 Membership

A Board of Appeals is hereby established in accordance with Sec. 12 and 14 of Ch. 40A of the MGL, as amended. Said Board shall consist of five (5) Members, each appointed by the Board of Selectmen for a term of five (5) years, provided that only one term shall expire each year; there shall be two (2) Associate Members, each appointed by the Board of Selectmen for a period of four (4) years, one term to expire every second year, to serve on said Board of Appeals in the case of a vacancy, the inability to act, the absence, or personal interest on the part of a member. No member or associate member shall act on any appeal in which he (she) has a personal or financial interest.

9.2 Powers of Board

9.2.1 Rules of Procedure

The Board of Appeals shall adopt such rules governing its procedure and the conduct of its business and shall exercise such powers and duties as are consistent with Ch. 40A, MGL, as may be from time to time amended. Said rules of procedure shall prescribe the size, form, contents, style and number of copies of plans and other documents and number of copies of plans and other documents and shall include provisions for submission of petition in writing, for advertising and holding hearings, for keeping records of proceedings, for recording the vote of each member upon each question, for setting forth the reason or reasons for each decision, and for notifying the parties at interest, including the Building Inspector and the Planning Board, as to each decision.

Wherever proceedings under this Bylaw require the giving of notice by publication in a newspaper, mailing or service by a civil officer, the costs thereof shall be borne by the applicant. The Board of Appeals shall require estimated costs to be advanced by the applicant in accordance with provisions in the rules.

The powers and duties of the Board of Appeals shall include the power to determine action in the cases set forth in paragraphs 9.2.2, 9.2.3 and 9.2.4 below.

A copy of the rules and procedures shall be filed with the Town Clerk.

9.2.2 Appeals

The Board of Appeals shall hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from the Building Inspector acting as enforcement officer under this Bylaw or by any other person otherwise aggrieved by a decision or order of the Building Inspector pursuant to Sec. 8, Ch. 40A, MGL.

9.2.3 Special Permit

The Board of Appeals shall hear and decide only such Special Permits as are specifically authorized by the terms of this Bylaw. The Board may grant Special Permits after a public hearing only where such conditions and safeguards as required by this Bylaw have been made, and only after a determination that such grant would not be detrimental to the public health, safety, welfare, comfort or the convenience of the community and would not be adverse to the Town's economy and environment.

A special permit shall not be granted by the Board of Appeals unless and until:

- a. A written application for a Special Permit is submitted indicating the specific section of this Bylaw under which the Special Permit is sought and stating the grounds on which it is requested;
- b. The Board of Appeals has made written findings certifying compliance with the specific provisions of this Bylaw governing the exception and that satisfactory provision and arrangement has been made covering the following where applicable, and action taken assuring that the special exception will not have an adverse effect on adjoining properties or properties generally in the district:
 1. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience; off-street parking and loading areas where required, traffic flow and control; access in case of fire or catastrophe; and the capability of public roads to support the added traffic safely;
 2. The proposed use will not create any danger of pollution to the public or private water facilities, and the methods of drainage at the proposed site, either on-site or public sewage systems wherever necessary are adequate. No excessive demand shall be imposed on the water supply systems. The Board of Appeals may require the applicant to present engineering data showing effects both on and off the site on natural recharge of the groundwater, yield from abutters' wells and quality of surface and groundwater. If required, information on impacts on ground water quality should include data on storm water runoff, recharge, background water quality, on-site septic systems, and other on-site operations, including use of pesticides, fuel, toxic materials, hazardous materials and fertilizers which may be used in conjunction with the proposed development;
 3. Signs, if any, proposed exterior lighting with reference to glare, and that no excessive noise, vibration, light, dust, smoke, heat, glare, or odor shall be observable at the lot lines;
 4. Refuse collection or disposal and service areas, with particular reference to items in Paragraphs 1 and 2 above;
 5. Screening and buffering with reference to type, dimensions and character;
 6. Required yards and other open space;
 7. Economic effect and general compatibility and harmony with adjacent properties and other property in the district;
 8. The comments and recommendations of the Planning Board have been considered where the Special Permit has been submitted to the Planning Board and the Planning Board has submitted its recommendations as required by this Bylaw. Reasons for not accepting any of the comments and recommendations of the Planning Board shall be noted.
- c. A Special Permit shall only be issued following a public hearing held within sixty-five (65) days after filing of an application with the Special Permit granting authority, a copy of which shall forthwith be given to the Town Clerk by the applicant.

Within ten (10) days after receipt of the application for a special permit under this section, the Board of Appeals shall transmit copies thereof, together with copies of the accompanying plans to the Board of Health, the Planning Board, and the Conservation Commission. All such boards shall investigate the application and report in writing their recommendations to the Board of Appeals.

The Board of Appeals shall not take final action on such application until it has received a report thereon from the Board of Health, Planning Board and the Conservation Commission or until said Boards have allowed thirty-five (35) days to elapse after receipt of such application without submission of a report. Failure by the permit granting authority to take final action upon the

application for a Special Permit within ninety (90) days of date of the public hearing shall be deemed a grant of the permit applied for and the Town Clerk shall certify forthwith.

A Special Permit granted pursuant to this section shall lapse after two (2) years, including such time required to pursue or await the determination of an appeal from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause, or in the case of permit for construction, if construction has not begun by such date except for good cause.

9.2.4 Variances

As provided by statute, the Board of Appeals may authorize with respect to a particular building, structure, or parcel of land, after a duly advertised public hearing, held within sixty-five (65) days after filing of an application with said Board and with the Town Clerk a Variance from any of terms of this Zoning Bylaw where owing to the circumstances relating to soil condition, shape, or topography of such land or structures, and especially affecting such land or structures, but not affecting generally the Zoning District in which it is located, a literal enforcement of the provisions of the ordinance or Bylaw would involve substantial hardship, financial or otherwise, to the owner of said building or parcel, and the desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such Zoning Bylaw.

Before any Variance is granted, the Board must find all of the following conditions to be present:

- a. Conditions and circumstances are unique to the applicant's lot, structure or building and do not apply to the neighboring lands, structures or buildings in the same district;
- b. Strict application of the provisions of this Bylaw would deprive the applicant of reasonable use of the lot, structure or building in a manner equivalent to the use permitted to be made by other owners of their neighborhood lands, structures or buildings in the same district;
- c. The unique conditions and circumstances are not the result of actions of the applicant taken subsequent to the adoption of this Bylaw;
- d. Relief, if approved, will not cause substantial detriment to the public good or impair the purposes and intent of this Bylaw;
- e. Relief, if approved, will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the district.

The Board may, in approving a Variance, impose conditions, safeguards and limitations both of time and of use, including the continued existence of any particular structures but excluding any condition, safeguards or limitations based upon the continued ownership of the land or structures to which the Variance pertains by the applicant, petitioners or any owner.

Within ten (10) days after receipt of the application for a Variance under this section, the Board of Appeals shall transmit copies thereof, together with copies of the accompanying plans to the Board of Health, the Planning Board and the Conservation Commission. All such Boards shall investigate the application and report in writing their recommendations to the Board of Appeals.

The Board of Appeals shall not take final action on such application until it has received a report thereon from the Board of Health, the Planning Board and the Conservation Commission or until such Boards have allowed thirty-five (35) days to elapse after receipt of such application without submission of a report. Failure of the Board to take final action within seventy-five (75) days of filing of such application shall be deemed to be a granting of the Variance and the Town Clerk shall so certify forthwith.

If the rights authorized by a Variance are not exercised within one year of the date of grant of such variance they shall lapse and may be reestablished only after notice and a new hearing pursuant to Ch. 40A, MGL.

9.2.5 Imposition of Special Conditions

In carrying out the provisions of paragraphs 9.2.3 and 9.2.4 above, the Board may impose, as a condition of its decision, such restrictions as to manner and duration of use as will in its opinion safeguard the legitimate use of the property in the neighborhood and the health and safety of the public, and conform to the intent and purpose of this Bylaw and such restrictions to be stated in writing by the Board and made a part of the Permit or Variance as the case may be, but no Variance shall be conditioned on the continued ownership of the land or structures to which the Variance pertains by any owner.

9.2.6 Basis for Resubmission

No petition considered under paragraphs 9.2.3 or 9.2.4 above, which has been unfavorably acted upon by the Board of Appeals, shall be again considered on its merits by said Board within two (2) years after the date of such unfavorable action unless the Board of Appeals and Planning Board consent thereto under the provisions of Sec. 16 of Ch. 40A as amended.

10. AMENDMENTS AND PROCEDURAL MATTERS

10.1. Amendments

All amendments to this Bylaw shall be made in accordance with Ch. 40A MGL as amended.

No proposed change in this Bylaw which has been unfavorably acted upon by the Town Meeting shall be considered by the Town Meeting within two (2) years after the date of such unfavorable action unless adoption of the proposed change had been recommended in the final report of the Planning Board to the Town Meeting.

10.2 Effective Date of Amendment

The effective date of an amendment to this Bylaw shall be the date on which such amendment was adopted by a favorable two-thirds (2/3) vote of Town Meeting subject to approval by the Attorney General and publication in a town bulletin or pamphlet and posting or its publication in a newspaper, all pursuant to MGL, Ch. 40, Sec. 32.

10.3 Issuance of Special Permits

Special Permits shall only be issued following public hearings held within sixty-five (65) days after filing of an application for the Special Permit with the Board which has the authority to issue the Special Permit; a copy of each such application shall forthwith be filed with the Town Clerk by the applicant.

10.4 Procedural Matters

All matters with respect to the interpretation, administration or enforcement of this Bylaw and the conduct of proceedings of the Board of Appeals and Planning Board hereunder shall be governed by the provisions of Ch. 40A or other applicable provisions of the MGL as well as the provisions of this Bylaw.

10.5 Failure to Act

If the Board of Appeals or the Planning Board shall fail to act within ninety (90) days of the required public hearings on an application for a Special Permit, or the Board of Appeals shall fail to act within seventy-five (75) days of filing of the appeal, application or petition, other than for a Special Permit, then the petition shall be deemed approved subject to the following requirements:

- 10.5.1 The petitioner, after the expiration of the aforesaid periods, shall file with the Town Clerk a copy of his petition and an affidavit stating the date of the public hearing or filing as the case may be, and the failure of the Board in question to render a decision within the required period;
- 10.5.2 Upon receipt of the petition and the affidavit, the Town Clerk shall forthwith give notice of the filing to those persons entitled to a notice of the decision under Ch. 40A, Sec. 15. The filing of a petition and affidavit in the office of the Town Clerk shall be deemed the equivalent of the filing of a decision for purposes of judicial appeals provided for under Ch. 40A, Sec. 17;
- 10.5.3 If no appeal is taken within the required statutory period, then the Town Clerk shall furnish the petitioner with a certified copy of the petition and affidavit together with a certificate that no appeal has been filed, all of which shall be recorded in the manner prescribed under Ch. 40A, Sec. 15, in lieu of the documents required to be recorded under that Section.

10.6 Lapse of Special Permits

Special Permits shall lapse within a period of eighteen (18) months (unless otherwise specified in this Bylaw) plus such time as is required to pursue or await the determination of an appeal referred to in Sec. 17 of Ch. 40A from the date of the grant thereof, if a substantial use has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause.

10.7 Failure of Board to Respond

The failure of any board or agency to which a petition for a Special Permit is referred for recommendation and/or a report to make such recommendations and/or the report within thirty-five (35) days of receipt by such board or agency of the petition shall be deemed lack of opposition thereto.

11. **DEFINITIONS**

In this Bylaw the following terms shall have the following meanings unless a contrary meaning is required by the context or is specifically prescribed. Words used in the singular include the plural and words used in the plural include the singular. Words used in the present tense include the future.

Accessory Apartment: A separate complete dwelling unit that is contained substantially within the structure of a one-family dwelling unit, is served by a separate entry/exit and can be isolated from the principal one-family dwelling unit.

Accessory Use or Building: A use or building which is subordinate and customarily incidental to and located on the same lot with the principal use or building to which it is accessory.

Automobile Repair Shop: A shop or garage for the repair of motor vehicles, other than a private garage or a gasoline service station.

Bedroom: In a multi-family dwelling, any inhabitable room of forty-eight (48) sq. ft. or more, other than the living room, dining room, kitchen, utility room, or bathroom. Any dwelling unit in which no such room exists shall be construed to contain one bedroom.

Building: A structure having a roof or cover and forming a shelter for persons, animals, or property.

Building Height: Measured at the vertical distance from the average elevation of the finished lot grade at the front of the building to the highest point of the top story in the case of a flat roof and to the mean height between the plate and the ridge in the case of a pitched roof.

Cluster Development: An option which permits an applicant to build multi-family dwellings on a lot and single-family dwellings on lots with reduced lot area and frontage requirements so as to create a development in which the buildings and accessory uses are clustered together into one or more groups with adjacent common open land.

Common Open Space: a parcel or parcels of land or an area of water, or a combination of land and water within the site designated for a Residential Cluster Development, maintained and preserved for open uses.

Cooking Facilities: Any facilities (including without limitation a hot plate or portable oven, but not including an outdoor grill) which permits the occupant of a building to prepare or serve hot meals in the building on a regular basis.

Driveway: An improved access (other than a street) connecting between a street and one or more parking or loading spaces.

Dwelling: A building or part thereof designed, erected and used for continuous and permanent habitation for one or more families or individuals.

Dwelling Unit: A portion of a building occupied or suitable for occupancy as a residence and arranged for the use of one or more individuals living as a single housekeeping unit with its own cooking, living, sanitary and sleeping facilities, but not including trailers or mobile homes, however mounted, or commercial accommodations offered for periodic occupancy.

Fence: An artificially constructed barrier of any material or combination of materials erected to enclose or screen areas of land, including but not limited to wire, metal, board, posts, and natural vegetation.

Gasoline Service Station: A structure or lot used for the sale of gasoline and oil and for servicing motor vehicles, other than a private garage.

Hammerhead Lot: A lot with reduced frontage and special dimensional requirements, as specified in Section 4.3 of this Bylaw.

Homes Association: A corporation or trust owned or to be owned by the owners of lots or residential units within a tract approved for cluster development, which holds the title to open land and which is responsible for the costs and maintenance of said open land and any other facilities to be held in common.

Home Occupation: An occupation, business, trade, service or profession which is conducted on the premises used as the residence of the operator of the business and which is not allowed as a principal use.

Hotel, Motel or Lodging House: A building or part thereof or a group of buildings on a single lot providing public accommodations, where space is used for sleeping and appurtenant services by more than four (4) persons as paying guests, regular or transient.

Lot: A single area of land in one ownership throughout defined by metes and bounds or boundary lines as shown in a recorded deed or on a recorded plan.

Lot, Corner: A lot or parcel of land abutting upon two (2) or more streets at their intersection, or upon two (2) parts of the same street having street sidelines or tangents to sidelines forming an interior angle of less than 135 degrees.

Mobile Home: Any vehicle or object on wheels and having no motive power of its own, but which is drawn by or used in connection with, a motor vehicle, and which is so designed, and constructed or reconstructed or added to by means of such accessories as to permit the use and occupancy thereof for human habitation whether resting on wheels, jacks or other foundation, and shall include the type of vehicle commonly known as mobile home.

Mobile Home Park: Any lot of land upon which three (3) or more mobile homes occupied for dwelling purposes are located, including any buildings, structure, fixtures and equipment used in connection with mobile homes.

Multi-family Use: Three (3) or more dwelling units on a single lot, including any mix of single family, two-family or multi-family structures, whether or not attached, and regardless of form of tenure.

Private Garage: Covered space for the housing of motor vehicles, no more than two (2) of which belong to other than the occupants of the lot on which such space is located.

Rooming or Boarding House: A dwelling in which the person resident therein provides eating and/or sleeping accommodations for not more than three (3) paying guests who are not provided with separate cooking facilities and who use the cooking facility ordinarily used by the resident family.

Sign: A sign shall include any lettering, word, numeral, pictorial representation, emblem, trademaker, device, flag or other figure of similar character located outdoors and being a structure of any part thereof, or attached to, painted on, or in any other manner represented on a building or other structure, and used to announce, direct, attract, advertise or promote, including signs located inside a window only when illuminated or moving and shall not include the display of merchandise visible through such window. Marquees, canopies, awnings, clocks, thermometers and calendars shall be subject to the provisions of this Bylaw only when used to display or support signs as defined above.

Story: The portion of a building between the upper surface of any floor and the upper surface of the floor next above, having more than one-half of its height above the average elevation of the finished grade adjoining the building. Any part of a building between the topmost floor and the roof shall be deemed a half-story.

Street: A public way or a private way shown on a plan approved under the provision of the subdivision control law or in existence when the provisions of said subdivision control law became effective in the Town of Shirley having in the opinion of the Planning Board suitable width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of land abutting thereon or served thereby and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

Street Line: The sideline of a street or way, as determined by deeds and plans recorded at the Registry of Deeds, or a building line laid out under MGL, Ch. 82, Sec. 37, where no line is thus legally established, then a line parallel with the twenty-five (25) ft. distant from the center line of a travelled way.

Structure: A combination of materials to form a construction including among others, buildings, stadiums, tents, reviewing stands, platforms, stagings, observation towers, water tanks, play tower, swimming pools, trestles, sheds, shelters, fences, display signs, courts for tennis or similar games, backstops, backboards; the term "structure" shall be construed as if followed by the words "or portion thereof".

Wetlands: Area characterized by vegetation described in MGL, Ch. 131, Sec. 40.

12. VALIDITY AND CONFLICT OF LAWS

12.1 Validity and Conflict

Where any provision of this Bylaw imposes a greater restriction upon the development or use of land or structures than is imposed by other Bylaws, the provisions of this Bylaw shall control. The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof.

13. DESCRIPTION OF DISTRICT BOUNDARIES

(A seven (7) page memorandum attached to and incorporated by reference as part of the May 15, 1985 Zoning Map as amended March, 1986.)

The Residential districts are identified as R-R, R-1, R-2, and R-3.

The R-R (Residential Rural) district occurs in three (3) distinct areas: in north Shirley, west of Center Road, and in the eastern most portion on the Town along Walker and Hazen Roads.

North Shirley: starting at the northern most corner of the Town at the Squannacook River; thence following the Town boundary along the river on the property of the Massachusetts Department of Fisheries and Game to the southeastern most point of said property; thence following said property line in a southwesterly, southeasterly, and again southwesterly direction to Squannacook Road; thence westerly along said road to its crossing over Trap Swamp Brook; thence along the brook in a southwesterly direction to a point where it passes under Townsend Road; thence southerly along Townsend Road to its intersection with Great Road (Rte. 2A); thence westerly along said road to the Commercial District (C-2) described below; thence along the easterly, northerly, and westerly border of said district to Great Road; thence westerly on said road to the town line, thence north to the starting point.

West of Center Road: starting at the Shirley/Lunenburg town line on Whitney Road; thence easterly along said road to its intersection with Center Road; thence southerly along Center Road to the northern edge of the power line easement crossing said road; thence southwesterly along the northern edge of said easement to its intersection with a second such easement; thence following the second such easement along its northern edge in a southwesterly direction to its crossing of Catacunemaug Road; thence northwesterly along said road to the Shirley/Lunenburg town line; thence northerly along said town boundary to the starting point.

Walker and Hazen Roads: starting at the intersection of Hazen and Walker Roads; thence southerly along Walker Road to the intersection of said road with a line representing an extension of the northern boundary of the east/west power line easement; thence westerly along said line and said easement to its intersection with a second power easement near Peabody Road; thence north along said second easement to its crossing of Patterson Road; thence northerly in a straight line to a point on Hazen Road 1,070 ft. east of the center line of Clark Road; thence northeasterly along Hazen Road to the starting point.

The R-1 (Residential 1) district occurs in six (6) distinct areas: in north central Shirley; in the eastern most section of Town mostly within Fort Devens; in the southern section of Town within Fort Devens and the Massachusetts Correctional Institution; in the southwest section; a small area along the Lunenburg line; and a small section along Munson Avenue.

North Central Shirley: starting at the Shirley/Lunenburg town line at Great Road (Rte. 2A); thence southeasterly along said road to the commercial district described below; thence southwest, south, east, and north around said district and continuing beyond it to the juncture with Townsend Road; thence northerly along Townsend Road to Trap Swamp Brook, northeasterly along said brook, southeasterly along Squannacook Road and northeasterly, northwesterly, and northeasterly to the Shirley/Groton town line at the Squannacook River, being the boundary of the above described R-R district; thence southeasterly along the Town's Squannacook River boundary to the northern edge of the power line easement; thence westerly along said easement to a point 400 ft. easterly from the center line of Kittredge Road; thence southerly, maintaining the same distance from Kittredge Road, to Great Road; thence westerly along Great Road to the point of crossing of Mulpus Brook; thence westerly along Mulpus Brook to a point of closest proximity to said road; thence crossing Great Road at 90° to a point 400 ft. southwesterly of said road; thence southerly to Hazen Road at a point 60.95 ft. east of the culvert of a brook under Hazen road and approximately 1,070 ft. east of the intersection of Clark and Hazen Roads; thence continuing in a straight line to a juncture with the power line easement; thence following northern edge of said easement in a southwesterly direction to its intersection with Center Road; thence northerly along Center Road to its juncture with Whitney Road, being the easterly boundary of the above described R-R district; thence westerly along

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Whitney Road to the Shirley/Lunenburg line; thence northerly along said line to the starting point at Great Road (Rte. 2A); excluding that area designated as the Parker/Longley Roads C-2 Area and that area designated as the C-2 Eastern Area.

East Central Shirley: the entire area of Fort Devens east of Walker Road to the Shirley/Ayer town line plus the corner of land forming an area bounded successively by the southern boundary of fort Devens, Walker Road, and the Shirley town line.

Southern Shirley: all the land lying within the boundaries of Fort Devens and the Massachusetts Correctional Institution.

Southwest Shirley: starting at the Shirley/Lunenburg line on Leominster Road; thence easterly along said road to the crossing of the power line easement; thence southerly along said easement to a point 200 ft. from Leominster Road; thence easterly the same distance from said road to 200 ft. westerly of Morin Street; thence southerly the same distance from said street; thence easterly again the same distance from said street; thence southerly on a line 600 ft. westerly of Lancaster Road to a point opposite a line at a 90° angle from the culvert on Lancaster Road; thence easterly to Lancaster Road to the point where it crosses the culvert; thence southerly on Lancaster Road for a distance of 700 ft.; thence southeasterly to the angle of the MCI boundary; thence southwesterly along said boundary for a distance of 1,600 ft.; thence at a 90° angle northwesterly to a point of intersection with the back property line of Deer Avenue; thence following the side property line to Lancaster Road; thence southerly along Lancaster Road to a property line some 775 ft. northerly from the Shirley/Lancaster town line; thence southerly on Lancaster Road 100 ft., thence westerly 608 ft., northerly 202 ft., and again westerly along said property line and its extension on a straight line to the Shirley/Lunenburg line; thence northerly along the town line to the starting point.

Lunenburg Line: starting at the Shirley/Lunenburg town line at the railway right-of-way; thence easterly along said right-of-way to a point opposite the northwest corner of Dead Pond at a 90° angle to said right-of-way; thence from said northwest corner northeasterly to an old woods road; thence northwesterly parallel to Catacunemaug Road to the Lake Shirley loop road; thence westerly to the Shirley/Lunenburg town line at the edge of the lake; thence southerly along said town line to the starting point.

Munson Avenue: starting at the juncture of the railway right-of-way and the power line easement northeasterly to a point 200 ft. westerly of Center Road; thence southerly parallel to Center Road at the same distance to a point 200 ft. north of Munson Avenue; thence westerly parallel to Munson Avenue at the same distance to a point 600 ft. from Center Road; thence southerly to the railway right-of-way at a 90° angle to it; thence westerly along said right-of-way to the starting point.

The R-2 (Residential 2) district occurs in three (3) locations: east central Shirley; central Shirley; and southern Shirley.

East Central Shirley: starting at the Shirley/Ayer town line on the Nashua River at the crossing of Great Road (Rte. 2A); thence following said road in a westerly direction to its crossing over the Mulpus Brook; thence westerly along the course of said brook forming the boundary with the R-1 district above; thence southwesterly from said brook and southerly along the same boundary to Hazen Road; thence easterly along Hazen Road to the Fort Devens boundary; thence following said boundary easterly to the Shirley/Ayer town line; thence northeasterly along the Town line to the starting point.

Central Shirley: starting with the juncture of the power line easement and the western boundary of the R-R district south of Hazen Road; thence following said easement southwest along its northern edge to a point 200 ft. west of Center Road; thence southerly parallel to Center Road at the same distance to the northern edge of the second power line easement; thence easterly and northeasterly along said easement to a point 400 ft. westerly from Clark Road; thence northerly parallel to Clark Road at the same distance to a point 1,600 ft. northerly from the juncture of Peabody and Clark Roads; thence easterly to the power line easement; thence northerly along the westerly boundary of the Walker/Hazen Roads R-R district to the starting point.

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Southern Shirley: starting at the juncture of Harvard and Shaker Roads at the MCI boundary; thence northeasterly on Shaker Road to its junction with Wilde Road; thence southerly on Wilde Road to the Fort Devens Boundary; thence northeasterly along the Fort Devens boundary to the northern boundary of the cemetery; thence westerly along said boundary and crossing Shaker Road to a point 200 ft. beyond it; thence northerly at the same distance parallel to said road to a point opposite Rodman Avenue; thence westerly to Shaker Road; thence northerly along said road to the center line of Catacunemaug Brook; thence westerly along said brook to the northern cemetery

boundary; thence southwesterly along said boundary to Harvard Road; thence northwesterly along said road to a point 200 ft. north of South Street; thence westerly at the same distance from South Street to the boundary of the R-1 District above; thence following said boundary south and southeast to its juncture with the boundary of MCI; thence easterly and northeasterly along said MCI boundary to the starting point.

The R-3 (Residential 3) district occurs in three (3) distinct areas; the Ayer Road area; the Catacunemaug-Village area; and the Shaker Road area.

Ayer Road: starting at the town line at the intersection of Ayer Road and the railroad right-of-way; thence southwesterly along the Fort Devens boundary to the crossing of a power line; thence northeasterly along said power line to the Trout Brook; thence westerly along Trout Brook to a point 1,000 ft. east of Benjamin Road; thence southerly to a point 200 ft. north of Ayer Road; thence westerly parallel to said road at the same distance to a point 200 ft. east of Center Road; thence southerly the same distance from Center Road to the railway right-of-way; thence westerly to the boundary of the R-1 district above; thence following the boundaries of the R-1, R-2, and R-R districts above to a point 300 ft. east of Patterson Road; thence southerly to the starting point at the Shirley Town Line.

Catacunemaug-Village: starting at the Shirley/Lunenburg town line on Catacunemaug Road; thence southeasterly along said road to its intersection with the railway right-of-way; thence along said right-of-way easterly to the property line of the George Frost Co.; thence southerly along said property line to Leominster Road; thence easterly along said road to its intersection with Lancaster Road at the crossing of Catacunemaug Brook; thence southeasterly along said brook to the northern most point of the Town's Fredonian recreation area; thence northeasterly at 90° across Fredonian Street to a point 200 ft. beyond said street; thence southeasterly parallel to said street to a center line between Page and Chapel Streets to a point 200 ft. east of Mill Street; thence northerly at the same distance from Mill Street to the center line between Front and Chapel Streets; thence easterly along this line to the Fort Devens boundary; thence southerly along said boundary to the northern property line of Samson Ocean Systems; thence westerly and southerly along said property line to its crossing of Catacunemaug Brook; thence westerly and northwesterly along the north boundary of R-2 and east boundary of R-1 to Leominster Road; thence southwesterly on said road to the center line of a dirt road on the south side of Leominster Road approximately 2,500 ft. from the Shirley/Lunenburg town line; thence northerly on a straight line to the R-1 boundary at the northern end of Dead Pond; thence along the northeastern boundary of said district to the Shirley/Lunenburg town line; thence northerly to the starting point.

Shaker Road: starting at the Fort Devens line at the cemetery; thence following the R-2 boundary northwest, northeast, north, and northeast to the property line of Samson Ocean Systems; thence easterly along said property line to the Fort Devens border; thence southerly and westerly along said border to the starting point at the Fort Devens boundary.

The Commercial districts are identified as C-1 (Commercial Village) and C-2 (Commercial Highway).

There is one C-1 (Commercial Village) district, and four (4) C-2 (Commercial Highway) districts along Great Road (Rte. 2A) and Lancaster Road.

C-1 Village: starting at the Fort Devens boundary; thence westerly following the northern boundary of the R-3 district to the juncture of Leominster and Lancaster Roads; thence northerly on a line 100 ft. westerly of Center Road to the railway intersection; thence easterly following the line of the R-3 district to a point opposite the intersection of Clark and Ayer Roads; thence southerly to the starting point at the Fort Devens boundary.

C-2 Great/Going Roads: starting on the northerly side of Great Road (Rte. 2A) at the juncture with Going Road; thence northerly along the western property line of the former Shell Club for a distance of 400 ft.; thence easterly approximately 650 ft. to a boundary line corner of J & A Realty Trust; thence southerly 400 ft. along said property line to Great Road; thence easterly approximately seventy-five (75) ft. to the easterly property line of Pines Realty Trust on the south side of Great Road; thence southerly along said boundary to the A T & T easement; thence westerly along said easement to the westerly property line of Warila Realty Trust; thence northeasterly approximately 1,131 ft. along said property line to Going Road; thence easterly along Going Road to the starting point at the juncture of Great and Going Roads.

C-2 Parker/Longley Roads: starting at a point 200 ft. southeast of Longley Road on the course of the Mulpus Brook; thence south 47° 58" 14' west, crossing Great Road and continuing southwest of Great Road 200 ft.; thence northwesterly parallel with Great Road to Parker Road; thence southwesterly along Parker Road to a point 328 ft. southwesterly of Great Road at an existing property line; thence 266 ft. northwesterly to a corner of a property line; thence northeasterly along said property line to a point on the southwest side of Great Road; thence along a line perpendicular to Great Road to Mulpus Brook; thence along said brook southeasterly to the point of beginning.

C-2 Eastern: starting at Great Road 900 ft. southeast of the intersection of Longley and Great Roads; thence southeast along said road to a point 1,850 ft. from said intersection; thence at a 90° angle northeasterly to the course of the Mulpus Brook; thence northwesterly along said brook to a point at a 90° angle opposite the starting point at Great Road; thence southwesterly to the starting point.

C-2 Lancaster Road: starting at the easterly side of Lancaster Road at the Shirley/Lancaster town line; thence following Lancaster Road along the Industrial and R-1 district boundaries; thence easterly along the R-1 district boundary; thence southeasterly along said boundary to the MCI property line; thence southwesterly along said boundary to the Shirley/Lancaster town line; thence westerly along said line to the point of beginning.

The I (Industrial) district occurs in seven (7) areas: Great Road; Ayer Road east; Ayer Road Village; George Frost; Samson Ocean Systems; Leominster Road; and Lancaster Road.

Great Road: starting on Great Road (Rte. 2A) at the Shirley/Ayer line; thence westerly along said road to a point 400 ft. from the center line of Kittredge Road; thence northerly parallel to Kittredge Road at the same distance to the northern edge of the power line easement; thence easterly along the easement to the town line; thence southerly along the town line to the starting line.

Ayer Road East: starting on the west side of Walker Road at the point of intersection of a line representing an extension of the northern boundary of the east/west power line easement; thence westerly along said line and power line easement to a point 300 ft. from Patterson Road; thence southerly parallel to said road at the same distance to the town line; thence northeasterly along the town line and Walker Road to the starting point.

Ayer Road Village: starting at the Fort Devens boundary at the southeast corner of the district at the power line; thence north, west, and south along the southern boundary of the R-3 district above to the northern boundary of the C-1 Commercial Village District; thence easterly along said boundary; thence southerly along said boundary to the Fort Devens line; thence northeasterly along the Fort Devens line to the starting point.

Samson Ocean Systems: starting at the intersection of the northern boundary of the Shaker Road R-3 area and Fort Devens; thence following said line northeast, east, northeast, north, and west; thence following the boundary of the Village R-3 district west and south, and R-2 district along Shaker Road to the first R-3 district; thence westerly along the northern boundary of the R-3 district to the starting point.

George Frost: starting at the western most boundary of the C-1 Village district at its intersection with the railway right-of-way; thence south along said boundary to the northern boundary of the R-3 Catacunemaug-Village area; thence westerly and northerly along said boundary to the railway right-of-way; thence easterly along the right-of-way to the starting point.

Leominster Road: starting at the Lunenburg/Shirley town line on the Leominster Road; thence following Leominster Road easterly to the southwest corner of the R-3 district; thence northerly along the western edge of the said R-3 district to its crossing of the railway right-of-way; thence westerly along said right-of-way to the Shirley/Lunenburg town line; thence southerly along said town line to the starting point.

Lancaster Road: starting at Lancaster Road on the Shirley/Lancaster town line; thence northerly along Lancaster Road to the R-1 district boundary; thence westerly along said R-1 district boundary for a distance of 608 ft.; thence northerly along said R-1 district a distance of 202 ft., thence westerly along a property line, and its extension, on a straight line to the Shirley/Lunenburg town lines; thence southerly along said town line to the intersection of the Shirley/Lunenburg/Lancaster town lines, thence easterly along the Shirley/Lancaster town line to the place of beginning.

14. MIXED USE ZONING OVERLAY DISTRICT

14.1 General

In order to permit a mixture of residential and commercial uses and a variety of building types, tracts of land within the Mixed Use Development Overlay District may be developed under a Special Permit with site plan approval granted by the Planning Board as hereinafter defined and limited. The Mixed Use Development Overlay District shall only pertain to the area of the Town known as C-1 Commercial Village.

14.2 Special Permit Authority

The Planning Board may grant a Special Permit with site plan approval for construction of a Mixed Use structure in the Mixed Use Development Overlay District. The Special Permit shall conform to this Section and to M.G.L. Chapter 40A, Section 9 and to regulations, which the Board shall adopt for carrying out its requirements hereunder. The Board shall consider and make recommendations regarding, among other things, the architectural value and significance of the site, building or structure, the general design, arrangement and texture, materials and color of the features involved and the relation of such features to similar features of buildings and structures in the surrounding area. In the case of new construction or additions to existing buildings or structures, the Board shall consider the appropriateness of the size and shape of the building or structure both in relation to the land area upon which the building or structure is situated and to the buildings or structures in the vicinity. Further, the Board may, in appropriate cases, impose dimensional and set back requirements in addition to those required by this Section. The Board shall not consider interior arrangements or architectural features not subject to public view.

14.3 Applicant Requirements

Applicants requesting Special Permits under this Section shall submit to the Planning Board, all documents and fees as required by Section 7.4 of the Town of Shirley Zoning Bylaw. In addition, every applicant must furnish proof of ownership of the property regarding the application. If the application for a Special Permit involves land under more than one ownership, each owner of the land included in the plan shall be party to the application, and upon approval, subject to its provisions. Signatures of all parties shall be required to process the application.

14.4 Permitted Uses

In a Mixed Use Development Overlay District, the following uses shall be permitted:

- a. Residential, only on floors above the ground floor.
- b. Business, only within the first two floors.
 1. Restaurants.
 2. Theaters.
 3. General retail sales and services (excluding retail sales of motor vehicles, boats, mobile homes and house trailers, automobile service stations and drive through banking facilities).
 4. Banks and financial services.
 5. Business and professional offices.
 6. All other uses as permitted in the MU Schedule of Use Regulations, Section 2 of the Zoning Bylaw.
 7. No drive-through services shall be allowed for any use.
- c. Expansion of existing buildings

Special Permits may be granted to a Mixed Use Development project that would permit upper floor additions to buildings provided that the square footage of each completed upper floor be equal to at least eighty (80) percent of the total square footage of the first floor and if the project meets all the parking and site plan criteria required by the Board and meets State Building Code requirements.

14.5 Design Requirements:

Dimensional requirements shall be those in Section 3.1 of the Zoning Bylaw.

Parking: In all mixed use projects, adequate off street parking shall be provided for all vehicles associated with the residential portion of the structure. Otherwise, parking shall be provided at the following rates, unless otherwise permitted by the Board, for the different types of uses within the Mixed Use Development Overlay District on land in the same ownership or on a separate parcel, provided the nearest parking space is within 300 feet of a principal entrance to the building that the parking lot will serve, and further provided that an agreement will be recorded dedicating the parcel to parking use for the reasonable life of the building. All off-street parking areas shall be required to have an area whereby the vehicles using the property can turn around on the property before returning to the street. No backing out onto Town roads shall be allowed.

Residential = Two (2) spaces per dwelling unit.

Commercial or business = One (1) space per 1200 square feet or part thereof.

Offices and Services = One (1) space per 300 square feet or part thereof.

Theaters, restaurants and places of public assembly = One (1) space for every four seats.

The design standards for off-street parking spaces shall be 8.5 feet by 20 feet or as allowed by the Board.

Height: In all Mixed Use Projects, the height of buildings shall not exceed 45 feet or three (3) floors above the mean finished grade of abutting properties.

14.6 Plan Requirements

Prior to investing in extensive professional design efforts for the site plan, it will often prove useful to review the proposed development of a parcel of land with the Planning Board, in order that general approaches and potential problems can be freely explored. Pencil sketches, which need not be professionally prepared, will assist in the discussion and might show some but not all of the information required on the final plans.

The final plans shall be prepared by a Registered Professional Engineer and/or Land Surveyor using modern drafting techniques through the use of CAD or shall be clearly and legibly drawn in black India ink upon tracing cloth or mylar 24 inches by 36 inches. The plans shall be to a scale not less than one (1) inch equals 40 feet or other scale as the Board shall prescribe to show details clearly and adequately. The plans shall be clearly designated "Plan for Mixed Use Development Overlay District". Such final plans shall include the following information:

- a. A title block shall be located at the lower right corner and shall contain the project name, the engineer's and/or surveyor's name and seal, the name of the owner and/or applicant and the date.
- b. Suitable space shall be reserved for recording the action of the Board, the date of such action and the signatures of the members of the Board.
- c. Boundary lines of bordering adjacent land or of land across an adjoining street or way from the property being developed and the names of the owners of such abutting land, as determined from the Towns most recent tax list.
- d. Location, direction, name and present widths of streets, easements and public or private ways, bounding, approaching or within a reasonable proximity of the development.

- e. Location and outline of all existing buildings and site features such as existing stone walls, fences, large trees or wooded areas, rock ridges and outcroppings, swamps, floodplain areas, water bodies and water courses.
- f. Acreage of the property and lot lines, bearings and dimensions thereof in conformity with the Zoning Bylaw.
- g. Location and purpose of all existing and proposed easements within the development area.
- h. Whenever uncertainty exists regarding areas claimed to be buildable or upon request of the Board of Health or Conservation Commission the plan shall also contain the approximate proposed location of the main building or buildings on the property in question, such location to comply with the Zoning Bylaw.
- i. Depiction of the building envelope in conformity with the Zoning Bylaw.
- j. Location of all off street parking areas and turn-arounds as required by the Zoning Bylaw.

15. SHARED RESIDENTIAL DRIVEWAY

15.1 General

It is the intent of this Section to provide for an optional, minor, exclusively residential development of three (3) lots or less, as an alternative to conventional subdivision development, suitable for some backland lots, while preserving the rural quality of the area through the reduction in access ways, increase in front yard setbacks and the maintenance of existing vegetative and topographic conditions. Any land granted a Special Permit under this Section shall not be further divided or extended except in conformance with the requirements of this Section.

15.2 Permitting Authority

The Planning Board may grant a Special Permit and approval for construction of a Shared Residential Driveway to serve no more than three (3) residential lots in accordance with Section 15 of the Town of Shirley Zoning Bylaw.

15.3 Applicant Requirements

Applicants requesting Special Permits under this Section shall submit to the Planning Board, all documents as required by this Section. In addition, every applicant must furnish proof of ownership of the property regarding the application. If the application for a permit involves land under more than one ownership, each owner of the land included in the plans shall be party to the application, and upon approval, subject to its provisions. Signatures of all parties shall be required to process the application.

15.4 Submittal Requirements

The final plans shall be prepared by a Registered Professional Engineer and/or Professional Land Surveyor using modern drafting techniques through the use of CAD or shall be clearly and legibly drawn in black India ink upon tracing cloth or mylar 24 inches by 36 inches. The plans shall be to a scale not less than one (1) inch equals forty (40) feet or other scale, as the Board shall prescribe to show details clearly and adequately. Profiles of the proposed Shared Residential Driveway shall be drawn to the same horizontal scale as the plan and with vertical scale ten (10) times larger unless otherwise authorized. The plans shall be clearly designated "Plan for Shared Residential Driveway Development". Such final plans shall include the following information:

- a. A title block shall be located at the lower right corner and shall contain the project name, the engineer's and/or surveyor's name and seal, the name of the owner and/or applicant and the date.
- b. Suitable space shall be reserved for recording the action of the Board, the date of such action and the signatures of the members of the Board.
- c. Boundary lines of bordering adjacent land or of land across an adjoining street or way from the property being developed and the names of the owners of such abutting land, as determined from the Town's most recent tax list.
- d. Location, direction, name and present widths of streets, easements and public or private ways, bounding, approaching or within a reasonable proximity of the development.
- e. Location and outline of all existing buildings and site features such as existing stone walls, fences, large trees or wooded areas, rock ridges and outcroppings, swamps, floodplain areas, water bodies and water courses.
- f. Acreage of the property and lot lines, bearings and dimensions, thereof in conformity with the Zoning Bylaw.

- g. Location and purpose of all existing and proposed easements within the development area.
- h. Whenever uncertainty exists regarding areas claimed to be buildable or upon request of the Board of Health or Conservation Commission the plan shall also contain the approximate proposed location of the main building or buildings on the property in question, such location to comply with the Zoning Bylaw.
- i. Depiction of the building envelope in conformity with the Zoning Bylaw.
- j. Location of all off street parking areas and turn arounds as required by the Zoning Bylaw.
- k. Certified abutters list from the Town's most recent tax list.
- l. Statement of compliance with Section 13 of the Zoning Bylaws.

15.5 Timetable for Action

Upon submittal of **fifteen (15)** copies of the plans for a Shared Residential Driveway Development, the Planning Board shall distribute the plans and request comments from other Town boards within thirty-five (35) days. After such time, and within sixty-five (65) days of submittal, the Planning Board shall hold a Public Hearing and shall render a final decision within ninety (90) days of the close of the Public Hearing.

15.6 Design Standards

- a. Any land being considered for a Shared Residential Driveway Development shall have at least the minimum amount of frontage as required by the zoning district in which the land is located, for a single residential lot. In addition, the size of the lots being developed shall equal no less than 150% of the minimum lot size per the zoning district, exclusive of wetlands.
- b. The minimum distance between any two Shared Residential Driveway Developments shall be no less than 900 feet measured from the centerline of the driveway at the intersection of the Town right of way.
- c. The maximum length of any Shared Residential Driveway shall be no greater than 1000 feet measured from its intersection with the public way to the most distant point of the Shared Residential Driveway.
- d. The minimum width of the Shared Residential Driveway shall be no less than sixteen (16) feet of traveled surface with two (2) foot shoulders on each side.
- e. The maximum grade shall be ten percent (10%). The minimum grade shall be one percent (1%).
- f. The Shared Residential Driveway may be either pavement or gravel. Whether the wearing surface is pavement or gravel, the driveway shall be constructed to the standards of Section 4.5.6.4 of the Town of Shirley Subdivision Rules and Regulations. All necessary inspections by the Public Works Director shall be required.
- g. The first thirty (30) feet from a public way shall be paved as required by the Department of Public Works.
- h. All distribution systems must be provided underground, including but not limited to, water, sewer, electric, gas and cable television.
- i. Turn-arounds shall be constructed at the ends of all Shared Residential Driveways to accommodate the turning of an SU-30 class vehicle. Turn arounds shall be located a minimum distance from the intersection of the Town way and the Shared Residential Driveway as follows: R-1, R-2, R-3 = 150 feet RR = 200 feet.

- j. A permanent marker, approved by the Board, of engraved granite not greater than six (6) square feet nor less than three (3) square feet in area and no less than forty-eight (48) inches in height shall be placed at the end of the driveway, on private property, where it meets the public way, with a diagram listing the addresses of the properties as assigned by the Building Inspector. Shared Residential Driveways shall not be named. A similar marker shall be placed where the Shared Residential Driveway meets each individual lot driveway, listing the address of the property. Should the Shared Residential Driveway split; permanent markers must also be placed at the intersections indicating which homes are located on either side of the split.
- k. Adequate drainage shall be provided. The drainage design and appurtenances shall prevent washout and excessive erosion and shall prevent drainage runoff from entering the public way, prevent runoff from the public way from entering the Shared Residential Driveway and prevent runoff from flowing across the driveway.
- l. The applicant shall pay all engineering and/or legal review costs of the Town's consulting engineer or attorney.
- m. All land area requirements shall be exclusive of wetlands as approved by the Town of Shirley Conservation Commission.

15.7 Deed Requirements

All deeds of ownership of lots served by a Shared Residential Driveway shall require that the owners of said lots must be members of a maintenance association, whose purpose is to provide for the maintenance of the Shared Residential Driveway. Each lot served by the Shared Residential Driveway must have permanent access to the drive by easements recorded in the Middlesex County Registry of Deeds. Such easement shall include the right to use the Shared Residential Driveway for all purposes for which private driveways are customarily used, including the right to install, maintain and repair drains, culverts and utilities located under, across or along the Shared Residential Driveway. The deed restriction, maintenance agreement and access easement shall be submitted to the Planning Board for review and approval prior to the granting of the Special Permit.

15.8 Maintenance Association Agreement

The Maintenance Association Agreement must impose upon the members the obligation of repair, maintenance and snow removal so as to cause the driveway, including the drainage serving the driveway, utilities located under, across or along the Shared Residential Driveway and the sightlines to the intersecting public way, to be repaired or maintained and snow to be removed in such a manner as to ensure the continuous year-round access to each lot by fire, police, ambulance and other vehicles, the adequate delivery of public utilities to the lots served by the driveway and the maintenance and preservation of the initial specifications of the Shared Residential Driveway.

15.9 Requirement of Enforceability

Each and every owner of a lot served by the Shared Residential Driveway shall have the right to enforce the obligation of other owners of the lots so served to repair and maintain the driveway in accordance with the association agreement and the applicable easements. No Certificate of Occupancy shall be approved by the Building Inspector until all the documents required by this Bylaw have been recorded and a copy of all documents and proof of such recording has been given to the Planning Board.

15.10 Completion of Roadway

No Building Permit may be issued with respect to a lot served by a Shared Residential Driveway, until such driveway is completed to the specifications of the Special Permit.

15.11 Acceptance as a Public Way

If all of the homeowners who share the Residential Driveway petition the Town for acceptance of the Shared Residential Driveway as a public way, the driveway must be brought up to the standards of the Town of Shirley

Subdivision Rules and Regulations for the construction and laying out of ways prior to Town Meeting. The cost of such improvements shall be at the expense of the homeowners and the scope of work shall be approved by the Public Works Department.

15.12 Lapse of Special Permit

A Special Permit granted under this Section shall lapse 24 months after the date the Shared Residential Driveway permit decision is filed with the Town Clerk's office unless substantial construction (as determined by the Board) has begun, except for good cause shown and approved by the Planning Board. Substantial construction shall consist of at least one of the following: lot clearing, installation of utilities or installation of foundation.

16. FENCES

16.1 General

In the interest of public safety, the installation of any permanent manmade or vegetative fencing or wall within twenty five feet (25') of a street right of way or pavement shall require the issuance of a Fence Permit and/or Building Permit as prescribed by the State Building Code and required by the Building Inspector. Any fence erected for the protection of public safety and associated with an approved construction project, demolition project or a temporary event (an event not lasting more than 30 consecutive days) shall not require the issuance of a Fence Permit. All applications for a Fence Permit shall be to the Building Inspector and shall include a plot plan drawn to scale showing the location of roadways and property lines. The Building Inspector shall enforce this Section.

16.2 Setbacks

All fences shall be set back a minimum of five (5) feet from the street right of way and at least five (5) feet from the edge of pavement. All vegetative fencing located on the front property lines or within the site triangle as described in Section 16.3, shall be placed far enough back from the lines so as to maintain the required set backs at mature growth.

16.3 Site Triangles

The site triangle is that area at the intersection of street right of ways or pavement with other streets, driveways or walkways, formed by the side lines of street right of ways or pavement, driveways or walkways and a line joining points on such lines twenty five (25) feet distant from their point of intersection. In the case of a rounded corner, from the point of intersection of their tangents. No fence, wall or landscape plantings shall be located within such a site triangle so as to obstruct visibility between a height of three and one half (3-1/2) feet and a height of eight (8) feet above the plane through their curb grades.

16.4 Recreational and Athletic Facilities

Fences required as part of athletic facilities such as, but not limited to, softball diamond or tennis courts may be permitted at heights in conformance with the established recreation standards.

16.5 Finished sides

The finished side of all fences shall be erected outward to abutting properties. Exceptions due to site layout and abutting properties may be allowed as approved by the Building Inspector.

16.6 Maintenance

All fences, walls and vegetated barriers shall be properly maintained. Any fence, wall or vegetated barrier in disrepair shall be promptly repaired or removed.

Town of Shirley
Water Overlay Map

Town of Shirley
Zoning Map